

CONTRACT

between

Contractor	)	Contract Number: MS214-09
)	
VEOLIA TRANSPORTATION)	
MAINTENANCE)	
AND INFRASTRUCTURE, INC (VTMI)	)	TRACK, STRUCTURES AND
24775 SAN PEDRO AVENUE	)	RIGHT-OF-WAY MAINTENANCE
LAGUNA HILLS, CA 92653	)	SERVICES
)	
Contract Manager)	
Name: Paul Marshall)	
Telephone: 714-633-4830)	
Email:)	
paul.marshall@veoliatransportation.com)	
)	
And)	
)	
)	
Southern California Regional Rail Authority	)	<u>Authority Contract Manager:</u>
700 South Flower Street, 26 th Floor	)	Name: Mike Ridens
Los Angeles, California 90017-4101	)	Telephone: 909-593-7687
	)	Fax: 909-593-0187
	)	Email: ridensm@scrra.net
)	
	)	<u>Contract Administrator:</u>
)	Name: Lia McNeil-Kakaris
)	Title: Senior Contract Admin.
)	Telephone: 213-452-0237
)	Fax: 213-452-0425

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**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
METROLINK COMMUTER RAIL SYSTEM**

**RFP NO. MS214-09
TRACK, STRUCTURES AND
RIGHT-OF-WAY MAINTENANCE SERVICES**

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This Agreement is made and entered into as of this 16th day of October 2008 by and between the SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (“Authority”), a joint powers authority organized under Sections 6500 *et seq.* of the California Government Code and Section 130255 of the California Public Utilities Code and VEOLIA TRANSPORTATION MAINTENANCE AND INFRASTRUCTURE, INC., (“Contractor”), a Corporation. Authority and Contractor are sometimes referred to collectively herein as the parties.

RECITALS

WHEREAS, Authority is a joint powers authority organized under Sections 6500 *et seq.* of the California Government Code and Section 130255 of the California Public Utilities Code, with power to contract for services described in Article 2, Scope of Services, herein below;

WHEREAS, Authority desires to hire a contractor to perform the Services in a safe, reliable and efficient manner in accordance with industry best practices for the maintenance of railroad track, related structures and right-of-way.

WHEREAS, Contractor has confirmed that it: (1) is qualified to perform such Services in accordance with Authority’s requirements; and (2) has reviewed all the available data furnished by Authority pertinent to the Services; (3) has reviewed the Services to be rendered; (4) will perform the Services in a good and workmanlike manner, in conformance with the requirements set forth herein and consonant with best practices in the railroad industry; and (5) is willing to accept responsibility of performing the Services set forth in this Agreement for the compensation and in accordance with the terms, requirements and conditions herein specified;

NOW, THEREFORE, for the consideration hereinafter stated, the parties hereto agree as follows:

1. DEFINITIONS

Unless defined herein, job titles and document references shall have the meanings ascribed to them in Authority documentation. The following capitalized terms are used in this Agreement with the following meanings:

- 1.1. AAR: “AAR” shall mean The Association of American Railroads.
- 1.2. Agreement: “Agreement” shall mean this Contract MS214-09 between Authority and Contractor.
- 1.3. AMTRAK: “AMTRAK” shall mean the National Railroad Passenger Corporation.
- 1.4. Annual Material Inventory: “Annual Material Inventory” shall mean the annual physical count and documentation of Track and Structures materials belonging to Authority.

- 1.5. Approved Budget: “Approved Budget” shall mean the budget agreed upon by the parties pursuant to the process described in Article 5 of this Agreement, including any agreed upon amendments to such budget.
- 1.6. AREMA: “AREMA” shall mean the American Railway Engineering and Maintenance Association.
- 1.7. Authority: “Authority” shall mean the Southern California Regional Rail Authority (also referred to herein as “SCRRA”), a joint powers authority created pursuant to Sections 6500 *et seq.* of the California Government Code and Section 130255 of the California Public Utilities Code.
- 1.8. Authority Commuter Railroad Operations: “Authority Commuter Railroad Operations” shall mean those railroad passenger services provided by or at the direction and under the control of Authority, and all related and/or ancillary functions necessary to the provision of those services.
- 1.9. Authority Contract Manager: “Authority Contract Manager” shall mean the authorized representative of Authority for matters related to this Agreement, as Authority shall designate in writing and who shall be the Manager of Track, Structures and Right-of-Way Maintenance.
- 1.10. BNSF: “BNSF” shall mean the BNSF Railway Company, which conducts freight railroad operations at various locations on the Service Property.
- 1.11. CMF: “CMF” shall mean Authority’s central maintenance facility located at 1555 San Fernando Road, Los Angeles, CA 90065.
- 1.12. C&S Maintenance Contractor: “C&S Maintenance Contractor” shall mean the contractor that performs signal and communication maintenance services on the Service Property.
- 1.13. Contracts Administration and Procurement Policies (referred to herein as “CA&PP”): “CA&PP” shall mean Authority’s procurement policies as amended from time to time.
- 1.14. Consumable Supplies: “Consumable Supplies” shall mean those materials and supplies purchased by Contractor and not applied or directly used in conjunction with Service Property, but used to support Contractor’s personnel, office operations, or administrative functions. Consumable Supplies include but are not limited to personal protective gear and Small Tools.
- 1.15. Contract Task Order (referred to herein as “CTO”): “CTO” shall mean a task order issued by Authority for Special Supplementary Maintenance authorizing Contractor to perform a specified task or service.

- 1.16.** Contracting Officer: “Contracting Officer” shall mean Authority’s Chief Executive Officer or authorized designee who has authority to execute contracts on behalf of Authority.
- 1.17.** Contractor: “Contractor” shall mean the firm(s) or entity(ies) selected by Authority to provide the Services under the terms and conditions of this Agreement.
- 1.18.** Controllable Items: “Controllable Item” shall mean a fixed asset that costs in excess of \$5,000 and has a useful life of one year or more
- 1.19.** Cost Proposal: “Cost Proposal” shall mean that certain cost proposal submitted by Contractor to Authority in response to RFP NO. MS214-09.
- 1.20.** Covered Employee: “Covered Employee” shall mean any employee of Contractor who is subject to any term or terms of a collectively negotiated agreement between Contractor and any group of its employees.
- 1.21.** CPUC: “CPUC” shall mean the California Public Utilities Commission.
- 1.22.** CWR: “CWR” shall mean continuous welded rail.
- 1.23.** Default: “Default” shall mean the failure of a party hereto to fulfill any of its obligations under this Agreement, which failure is not cured by that party within thirty (30) days of receipt by the other party of a written notice that such failure has occurred.
- 1.24.** Direct Costs: “Direct Costs” shall mean those costs incurred directly by Contractor in providing the Services.
- 1.25.** Direct Labor or Direct Labor Costs: “Direct Labor” or “Direct Labor Costs” shall have the meaning set forth in Article 6.
- 1.26.** Effective Date: “Effective Date” shall mean the date first written hereinabove.
- 1.27.** Employee Fringe Benefits: “Employee Fringe Benefits” shall have the meaning set forth in Section 6.2.1.A.3.b.
- 1.28.** Engineering Instructions and Standards: “Engineering Instructions and Standards” shall mean the latest version of the written documents, forms, plans and drawings issued to Contractor by Authority’s Engineering and Construction Department and when used in conjunction with this Agreement, prescribe Authority’s specific requirements for inspecting, maintaining and constructing the Track and Structures.

- 1.29.** Equipment Maintenance Contractor (referred to herein as “EMC”): “Equipment Maintenance Contractor” shall mean that entity engaged by Authority to perform maintenance of Authority’s rolling stock.
- 1.30.** Exempt Employee: “Exempt Employee” shall mean any employee of Contractor who is not in any way subject to the terms of a collectively negotiated agreement between Contractor and (i) any group of its employees or (ii) the duly designated representative of a group of Contractors’ employees.
- 1.31.** Extraordinary Work: “Extraordinary Work” shall mean those Services required to restore the Track and Structures or any embankments to normal operation following any storm, fire, derailment, earthquake, motor vehicle accident, act of vandalism, or any other disruption to service.
- 1.32.** Federal Railroad Workplace Safety Standards (referred to herein as “FRWS”): “FRWS” shall mean the FRA roadway worker safety standards set forth at 49 CFR 214, as such regulation may be amended from time to time. A copy of the FRWS current as of the Effective Date of this Agreement is attached hereto at Appendix F.
- 1.33.** Federal Track Safety Standards (referred to herein as “FTSS”): The FRA track safety standards set forth at 49 CFR 213 subparts A to F, as such regulation may be amended. A copy of the FTSS current as of the Effective Date of this Agreement is attached hereto at Appendix F.
- 1.34.** Fees: “Fees” shall mean those costs incurred by Contractor that are specific to the performance of the Services and that are not part of Contractor’s overhead or general cost of doing business. Fees include but are not limited to charges assessed for street closure permits, heavy and/or wide load permits, temporary utility connections, dump fees for disposal of waste materials and inspection fees for Authority vehicles. Costs not included as Fees are charges for administrative functions including but not limited to business licenses, vehicle registration, and office utility charges.
- 1.35.** Fiscal Year: “Fiscal Year” shall mean that twelve-month period beginning July 1 and ending June 30 in any pair of successive calendar years.
- 1.36.** FRA: “FRA” shall mean the Federal Railroad Administration.
- 1.37.** FTA: “FTA” shall mean the Federal Transit Administration.
- 1.38.** Full Time Equivalent (referred to herein as “FTE”): “FTE” shall mean the equivalent of one person working a forty (40)-hour workweek.

- 1.39.** Fully Burdened Labor Cost (referred to herein as “FBLC”): “FBLC” shall mean the cost for labor services that Contractor bills to Authority, including all of the elements listed in Section 6.2.1.
- 1.40.** General and Administrative Overhead (referred to herein as “G&A Overhead”): “G&A Overhead” shall have the meaning set forth in Article 6.
- 1.41.** General Code of Operating Rules (referred to herein as “GCOR”): “GCOR” shall mean those rules governing employees in the operation of Authority Commuter Railroad Operations and maintenance related thereto, which also include Authority’s Timetable, Special Instructions, General Orders, Bulletins and Maintenance GCOR, as promulgated and amended from time to time by the Authority.
- 1.42.** Incentive Improvement Plan (referred to herein as “IIP”): “IIP” shall mean Contractor’s plan of measurable categories of performance criteria used as a basis to calculate Performance Incentive Payments.
- 1.43.** Key Staff: “Key Staff” shall mean all of Contractor’s Exempt Employees occupying the positions of Maintenance Contract Manager, Assistant Maintenance Contract Manager, Material Management Supervisor, Safety Manager, Training Manager, Railroad Bridge Supervisor, Office Engineer, and Project Engineer in connection with Contractor’s performance of the Services.
- 1.44.** Liquidated Damages: “Liquidated Damages” shall have the meaning set forth at Article 23 herein.
- 1.45.** Limit Line: “Limit Line” shall mean the line that is twenty (20) feet on each side of the centerline of the railroad track on the Service Property where the Service Property includes only a single track, or that is twenty (20) feet beyond the centerline of the outermost track on the Service Property where there is more than one track. In circumstances where the width of the available right-of-way is less than forty (40) feet the Limit Line shall be the outer boundary of the available right-of-way.
- 1.46.** Maintenance Contract Manager (referred to herein as “MCM”): “MCM” shall mean the member of Contractor’s staff who shall have the responsibilities and qualifications set forth in Section 3.2.1.
- 1.47.** Materials Management Policies and Procedures: “Materials Management Policies and Procedures” shall mean Authority’s written guidelines, as amended from time to time, for procuring inventory materials and completing Annual Material Inventory.
- 1.48.** Member Agencies: “Member Agencies” means Los Angeles County Metropolitan Transportation Authority (“LACMTA”), Orange County

Transportation Authority (“OCTA”), Riverside County Transportation Commission (“RCTC”), San Bernardino Associated Governments (“SANBAG”), and Ventura County Transportation Commission (“VCTC”), or the successors in interest to any or all of them.

- 1.49.** Mobilization Period: “Mobilization Period” shall mean that period of time beginning on the Effective Date of this Agreement and ending on the date Contractor begins providing Services, during which Contractor shall train and qualify its staff, arrange for rental and delivery of equipment, establish headquarters and communications systems and perform all other tasks necessary for Contractor to prepare to perform the Services.
- 1.50.** MPH: “MPH” shall mean miles per hour.
- 1.51.** New Capital: “New Capital” shall mean those projects that achieve expansion of the system, such as new main tracks, new sidings, and new signal systems.
- 1.52.** Ordinary Maintenance: “Ordinary Maintenance” shall mean all actions and work, other than Extraordinary Work and Special Supplementary Maintenance, required in order to ensure the safety and reliability of the Track and Structures used in the delivery of Authority Commuter Rail Operations. For the purposes of this Agreement, Ordinary Maintenance includes but is not limited to all Authority and FRA required inspections and Remedial Actions, as well as ongoing minor repairs and infrastructure component replacements to achieve a consistent minimum standard of operational reliability and to maintain the FRA Track Class set forth in the Engineering Standards and Instructions.
- 1.53.** Performance Goals: “Performance Goals” shall mean those criteria to be jointly determined between Authority and Contractor to establish all category benchmarks for Performance Incentive Payments.
- 1.54.** Performance Incentive Payments: “Performance Incentive Payments” shall mean those payments made by Authority to Contractor’s and any key Subcontractor’s Covered and Exempt Employees in accordance with Article 6.
- 1.55.** Preventive Maintenance (referred to herein as “PM”): “PM” shall mean all applicable regulatory inspections and routine service required to maintain Authority’s non-revenue vehicles and equipment in fully operable condition.
- 1.56.** Profit: “Profit” shall have the meaning set forth in Article 6.
- 1.57.** Qualified: “Qualified” shall mean having satisfied the training requirements for a position and possessing the background, skills and experience necessary to fulfill the duties of a job as described in Appendix D.

- 1.58.** Quality Control Plan (referred to herein as “QCP”): “Quality Control Plan” shall mean Contractor’s detailed plan for work quality and material control.
- 1.59.** Quality Performance Incentive Plan (referred to herein as “QPIP”): “QPIP” shall mean a monthly report prepared by Contractor to indicate Contractor’s progress toward earning Performance Incentive Payments.
- 1.60.** Recollectable Work: “Recollectable Work” shall mean any work performed and compensated under this Agreement on behalf of third parties where Authority does not typically fund the construction or installation.
- 1.61.** Remedial Action: “Remedial Action” shall mean Contractor’s response to conditions detected during inspections. It includes measures to protect the safety of trains and the public, temporary adjustments or repairs, and permanent adjustments, corrections and/or repairs and measures specified as Remedial Actions by the FTSS.
- 1.62.** Rehabilitation/Renovation (referred to herein as “R&R”): “R&R” shall mean any improvements, through repair, rehabilitation or replacement, to existing assets to replace worn, decayed, or obsolete infrastructure to extend the useful life of such capital assets. Examples of R&R include but are not limited to replacement of all of the rail on a curved segment of track, or removal of a complete turnout and replacement with a new one.
- 1.63.** SCRRA: “SCRRA” shall mean Southern California Regional Rail Authority (also referred to herein as “Authority”).
- 1.64.** Services: “Services” shall mean any and all of the inspection, repair and maintenance work performed by Contractor pursuant to the terms and conditions of this Agreement.
- 1.65.** Service Plan: “Service Plan” shall mean the detailed inspection and maintenance plan setting forth Contractor’s Services, to be developed during Authority’s annual budget process, and to be performed in the following Fiscal Year as described in Article 5. The Service Plan shall include (i) a general description of Contractor’s proposed level of staffing, (ii) the duties of all staff, (iii) the regular working assignments of the staff, (iv) a description of support functions including the annual safety plan, training plan, maintenance and support for both Authority and Contractor vehicles and equipment, (v) a description of required administrative services, and (vi) a table illustrating Contractor’s proposed project management organization including channels of communication and authority. The Service Plan will include an Authority-defined amount of estimated Recollectable Work, Extraordinary Work, and work in support of R&R or New Capital.

- 1.66. Service Property:** “Service Property” shall mean the Tracks and Structures and other facilities (excluding stations) that are located on or adjacent to Authority’s rail lines and at the yards listed at Appendix A, the maintenance of which shall constitute, in part, Contractor’s Services pursuant to the terms and conditions of this Agreement. The parties may amend the list at Appendix A only by executing a written agreement and by including a description of any such additional Tracks and Structures, land and other facilities (excluding stations) or by indicating which lines and yards will be deleted in the annual Service Plan.
- 1.67. Small Tools:** “Small Tools” shall mean any hand tool or power tool individually costing less than \$1,000.
- 1.68. Special Inspection:** “Special Inspection” shall mean any inspection of the Track and Structures and right-of-way following a storm fire, derailment, earthquake, motor vehicle accident, act of vandalism, or any other disruption to service.
- 1.69. Special Supplementary Maintenance:** “Special Supplementary Maintenance” shall have the meaning set forth in Section 3.9..
- 1.70. Standard of Performance:** “Standard of Performance” shall have the meaning set forth in Article 21.
- 1.71. Start Date:** “Start Date” shall mean the date on which Contractor begins providing Services pursuant to the terms and conditions of this Agreement.
- 1.72. Subcontractor:** “Subcontractor” shall mean a party or parties who perform(s) a portion of the Services under the control and at the direction of Contractor, pursuant to a separate agreement between such party and Contractor.
- 1.73. Supplementary Inspection:** “Supplementary Inspection” shall mean any inspection in addition to either any regularly scheduled or Special Inspection, which may be requested by Authority at any time to ascertain the condition of the Service Property.
- 1.74. System Safety Program Plan (referred to herein as “SSPP”):** “SSPP” shall mean the latest version of the compilation by Authority of the performance, monitoring, and auditing tasks related to inspection, testing or maintenance of the Service Property, or personnel qualifications, training, and rules compliance necessary for the operation of the Authority Commuter Railroad Operations. The SSPP shall also include Contractor’s employee rule book and instructions as set forth in Appendix C attached hereto. A copy of the SSP current as of the Effective Date of this Agreement is attached hereto at Appendix K).

- 1.75. Third Party Contractor:** “Third Party Contractor” shall mean any contractor engaged by Authority or parties other than Contractor to perform work at the Service Property, and whose work Contractor must accommodate as part of Contractor’s performance of the Services.
- 1.76. Territory Code:** “Territory Code” shall mean a code assigned to the subdivision of the Service Property as defined on Appendix A. A Territory Code will identify a funding source and indicate the accountability of Authority to the Member Agencies and other funding sources.
- 1.77. Track and Structures:** “Track and Structures” shall include but not be limited to all rail, ties, turnouts, ballast, rail roadbed and grade crossing surfaces (including striping and swing gates) 15 feet from outermost track, railroad operational signage, fences in between tracks, bridges, culverts, ditches lined or unlined, retaining walls, tunnels, slope protection, embankment cut and fill slopes, beach shore protection, vegetation affecting railroad operations, specifically designated railroad buildings and facilities and track and structure storage and staging yards as more particularly described at Appendix A. Track and Structures do not include communications and signal facilities, passenger stations, equipment maintenance and repair facilities (except track), or dispatching facilities.
- 1.78. Track Geometry Car:** “Track Geometry Car” shall mean a track inspection vehicle capable of measuring the geometric parameters of the track (i.e., gauge, super elevation, alignment, and profile), comparing these with the FTSS, and producing reports on these conditions and exceptions to the FTSS. Track Geometry Car will include gauge restraint measurements if so directed by Authority, as Authority shall determine in the exercise of its sole discretion.
- 1.79. Track Maintenance and Engineering Instructions:** “Track Maintenance and Engineering Instructions” shall mean the latest version of a portion of the Engineering Instructions and Standards that specifically prescribes Authority’s requirements for inspecting, maintaining and constructing track. A copy of the Track Maintenance and Engineering Instructions current as of the Effective Date of this Agreement is attached hereto at Appendix L.
- 1.80. Train Operations Contractor:** “Train Operations Contractor” shall mean that entity engaged by Authority to operate trains as part of Authority Commuter Railroad Operations.
- 1.81. UP:** “UP” shall mean the Union Pacific Railroad Corporation, which conducts freight railroad operations at various locations on the Service Property.

- 1.82.** Vehicle Maintenance Contractor (referred to herein as “VMC”): “VMC” shall mean the entity engaged by Authority to perform maintenance of Authority’s non-revenue vehicles and equipment.
- 1.83.** Warehouse / Storage Yards: “Warehouse / Storage Yards” shall mean those locations where Authority Track and Structures materials are stored including the fenced material yards at Taylor, Sand Canyon, Pomona, Lang, Ramona, and Moorpark, project specific storage sites, and locations at any point along the railroad lines of the property where material (which may include new or used welded rail) is stored.
- 1.84.** Wet Rate: “Wet Rate” shall mean that unit rate inclusive of cost of ownership and operation, fuel, lubricants, normal wear items (tires, brakes, filters, batteries and lamps), repairs, insurance, fees, licenses, and other costs to operate all Contractor-provided vehicles and equipment.
- 1.85.** Work Stoppage: “Work Stoppage” shall mean an occasion on which employees do not report for work in protest in connection with a dispute with their employer, because the employer has and/or the employees have elected to exercise any self-help rights that may be available to them pursuant to applicable law.

2. SCOPE OF SERVICES

2.1. GENERAL

Contractor shall perform the Services and related tasks as described below. This is a non-exclusive Agreement, under which Authority may, at its sole discretion, augment or supplement the Services with its own forces or forces of another contractor or entity. Contractor shall cooperate fully with Authority's staff or any other contractor or entity that may be providing similar or the same services for Authority.

2.2. TRACK, STRUCTURES AND RIGHT-OF-WAY MAINTENANCE REQUIREMENTS

The railroad track, Structures and right-of-way that are the subject of the Services are a part of the general railroad system of transportation within the meaning of 49 CFR 213.1.

2.2.1. Inspections

- 2.2.1.A.** Visual Track Inspections At a minimum, the procedure for conducting the visual inspections shall be in accordance with the FTSS. Each inspection shall be reported on the designated forms listed in Appendix L, attached hereto. Contractor shall perform visual inspections in accordance with the following schedule:

2.2.1.A.1 Main tracks and sidings carrying passenger traffic shall be inspected three times each week, once on each three or four day weekend, and prior to the operation of any passenger train if no trains have operated for a period of thirty (30) hours or more.

2.2.1.A.2 All other tracks carrying freight traffic at speeds in excess of 10 MPH shall be inspected twice per week.

2.2.1.A.3 Contractor shall perform an inspection on foot of each main track turnout monthly.

2.2.1.A.4 Semi-Annually (approximately every 6 months), Contractor shall perform an inspection jointly with Authority's C&S Maintenance Contractor on all switches connected to the signal system.

2.2.1.A.5 All other track inspections shall be conducted in accordance with FTSS, including schedules of completion of such inspections.

2.2.1.A.6 Any and all tracks that connect to or approach Authority's operating main track for a minimum distance of 50 feet from the clear point shall be inspected at the same frequency as stated in Subparagraph 2.2.1.A.1 above.

2.2.1.A.7 At least quarterly, Contractor's track inspector shall ride the head-end (locomotive or cab car) of a train on each main track within the inspector's territory, produce written observations based on the ride and engineer's comments, and promptly perform any appropriate Remedial Action.

2.2.1.A.8 Contractor's track inspector shall observe and report in writing other right-of-way conditions including fences, gates, and right-of-way encroachments that could impact the safety and operations of the rail system. Contractor shall conduct such observations at the same frequency as stated in Subparagraph 2.2.1.A.1 above.

2.2.1.B. Rail Flaw/Defect Inspections

2.2.1.B.1 Periodic rail flaw/defect detection of in-track rails in railroad lines used for Authority rail will be performed by a Third Party Contractor.

2.2.1.B.2 Contractor shall provide an out-of-track rail flaw/defect report for repair or replacement rail that is maintained in

inventory. Inspection of rail to be designated for repair will be performed at Authority's request.

2.2.1.C. Ultrasonic Testing and Inspections. Contractor shall arrange to have a certified weld inspector from an independent testing firm ultrasonically test all Contractor thermite field welds in accordance with the Authority's Track Maintenance and Engineering Instructions (Appendix L).

2.2.1.D. Geometry Inspections. Contractor will perform tri-annual track geometry tests with at least 120 days between tests. Such tests will include, at a minimum, a Gauge Restraint Measurement System test and a Holland TrackStar or equivalent test of Authority's main tracks and controlled sidings. The geometry test must conform to the standards set forth at 49 CFR 213.13, using an on-rail vehicle that weighs at least 44,000 lbs. and which is capable of exerting 3,000 lbs. lateral force on rail to test loaded gauge conditions. The geometry tests will compare the track geometry and posted operating speed with the requirements of 49 CFR 213 Subpart C, and Contractor shall report, as provided in Section 2.2.1.D.2., below on any exceptions to those requirements. Track geometry test results (1) will be available immediately during testing to enable Authority and/or Contractor personnel to take any necessary Remedial Action, and (2) must include the actual loaded track geometry as specified in 49 CFR 213.13.

2.2.1.D.1 The geometry tests will produce the following reports. Any real time reports required must be in-screen displays with "print screen" capability. End of daily test reports will be in electronic media (CD or equivalent format approved by Authority in writing) and on paper.

- a. A real time indication of every exception to FTSS.
- b. A real time display of GPS and milepost location and the current track parameters beneath the measuring vehicle.
- c. A summary report of the test, by mile, describing any exceptions and track conditions, and their location(s) within that mile.
- d. A summary report of the test, by route, of all exceptions and track conditions on that test segment.
- e. A table of curve characteristics setting forth, at a minimum, average and maximum degree of

curvature, average super elevation, permissible speed at 3" and 4" unbalance, length of curve.

- f. An analog plot of the following track parameters: gauge, crosslevel, alignment, warp, profile and ride quality, if available.
- g. A supplementary summary report of the test, by mile, listing all exceptions to the next-highest FRA class of track.

2.2.1.D.2 All summary and exception reports must include (1) milepost markers; (2) GPS locations of mileposts; (3) landmarks such as switches and road crossings; (4) ends of test segments; and (5) curve numbers.

2.2.1.D.3 For the second and following tests each year, the report must also include these comparative reports:

- a. Analog and summary of changes to track gauge.
- b. Analog and summary of changes to crosslevel.
- c. Analog and summary of changes to alignment.

2.2.1.E. Special Inspections.

2.2.1.E.1 Contractor shall perform Special Inspections of the Track and Structures or right-of-way to determine if there has been any damage to or alteration of conditions affecting the safety of trains. Contractor has the authority to initiate such inspections without specific authorization from Authority, and shall respond to requests for Special Inspections from Authority's C&S Maintenance, Train Operations, or Equipment Maintenance Contractors. Authority may request such Special Inspections at any time or for any reason, including for unusually high or low temperatures, heavy precipitation, high tides, winds, or suspected vandalism. Special Inspections may be made by Hy-Rail or other means generally accepted within the railroad industry. Special Inspections shall be coordinated with Authority staff in accordance with the applicable instructions set forth at Appendix L, attached hereto.

2.2.1.E.2 When regulatory agencies perform inspections of the Service Property, Contractor shall support such inspections by providing transportation, flag protection, inspection, and documentation of inspection, record research, and Remedial

Actions for any defects discovered in the course of such inspections.

2.2.1.F. Supplementary Inspections. Authority may request Supplementary Inspections at any time of the Track and Structures and right-of-way, in addition to the scheduled or Special Inspections (1) to ascertain the condition of the Service Property; (2) to research capital programs; (3) to acquaint personnel from Authority or other agencies with the Service Property; (4) to ascertain the level of training and performance of Contractor's staff; or (5) to coordinate work with others. Contractor shall perform such Supplementary Inspections upon request from Authority. Unless Authority directs otherwise, Contractor is not required to document Supplementary Inspections.

2.2.1.G. Structures Inspections

2.2.1.G.1 Contractor's Structures Inspector shall annually inspect all bridges, culverts, tunnels, retaining walls and Structures with the support of other Contractor personnel as such support may be required for access, staging, or other activities. A detailed list of Structures is attached hereto at Appendix G. Contractor shall perform any additional inspections as required and as authorized by Authority. Contractor shall document each inspection on the form designated for such inspection as set forth at Appendix L with an inventory of conditions and a list of recommended repairs in order of recommended priority. All such inspection reports shall include multiple digital photos of each structure inspected and incorporated into a binder of annual inspection reports, detailed requirements for which are set forth at Appendix U. Contractor shall (1) first perform repairs of any critical defects as determined by the inspector and discovered during inspection, and (2) then perform repairs in accordance with any repair priorities identified in the inspection reports.

2.2.1.G.2 Unless Authority otherwise instructs, in August and September of each year, Contractor shall inspect all culverts and Structures that have a history known to Authority of filling up with sediment or debris. Based on the results of such inspections, Authority will determine whether cleaning or debris removal is warranted and shall cause any removal work to be performed.

2.2.2. Remedial Actions

2.2.2.A. Contractor shall perform Remedial Actions to restore the Service Property to the condition described in Authority Engineering Instructions and Standards. Contractor shall perform all Remedial

Actions in accordance with Authority Engineering Instructions and Standards, FTSS, or if no applicable standard is specified therein, in accordance with generally accepted industry standards. Remedial Actions, if essential to preserve safe operation, shall be implemented immediately and not be deferred until the completion of the inspection. Contractor's inspectors and others who are duly authorized to perform inspections shall have the authority to perform Remedial Actions or to cause Remedial Actions to be performed.

2.2.2.B. Contractor shall schedule Remedial Actions to minimize conflict with all passenger train operations, to the extent consistent with safe train operations, regulations and instructions.

2.2.3. Preventive Maintenance Operations

2.2.3.A. General. Contractor shall perform Track and Structure, and embankment maintenance in accordance with Authority Engineering Instructions and Standards, FTSS or, if no applicable standard is specified therein, in accordance with generally accepted industry standards to preserve the economic life of the Service Property and Track and Structures, and to guard against excessive wear, erosion, or damage. The specific preventive maintenance tasks set forth in this Section 2.2.3.A, are representative, but not a comprehensive listing of this general obligation. Contractor shall perform preventive maintenance operations in accordance with Authority's Track Maintenance and Engineering Instructions as set forth in detail at Appendix L and Engineering Instructions and Standards as set forth in detail in Appendix I. For tasks not addressed in Appendix L, Contractor will follow the FTSS and will perform work in accordance with generally accepted industry standards for preventive maintenance. Contractor shall request that Authority Contract Manager resolve any conflicts Contractor identifies between the FTSS and generally accepted industry standards. Contractor is responsible for obtaining any permits required to perform any preventive maintenance.

2.2.3.B. Track Maintenance Operations.

2.2.3.B.1 Welding and Grinding Contractor shall perform preventive grinding and restorative welding of turnouts and crossing frogs, field welding of rail (both in and out of operating track), grinding of rail joints, support of other track maintenance operations, and temperature adjustment to CWR. Contractor shall perform any track welding operations requiring electric arc in accordance with Authority's Track Maintenance & Engineering Instructions, attached hereto at Appendix L.

2.2.3.B.2 Spot Tie Removal and Replacement Contractor shall remove and replace deteriorated timber ties with new ties and correct any clusters of poor ties in accordance with Authority's Track Maintenance and Engineering Instructions, attached hereto at Appendix L.

2.2.3.B.3 Surfacing Contractor shall perform track surfacing and dynamic track stabilizing with equipment provided by Authority. Contractor shall schedule such work in accordance with the Service Plan. Subject to Authority's approval, Contractor shall arrange for surfacing support activities including but not limited to fueling and maintenance of the equipment, transport of the equipment, delivery and unloading of ballast, and plotting and graphing of curves before and after surfacing. Contractor shall correct any surface and alignment defects detected by Authority's Vehicle Track Interaction System, and by the tri-annual track geometry inspections.

2.2.3.B.4 Track Fasteners and Track Bolts Contractor shall replace any damaged or defective track fasteners or track bolts in accordance with Authority's Track Maintenance and Engineering Instructions.

2.2.3.B.5 Embankment Maintenance Contractor shall maintain drainage ditches, remove talus from cut sections, and restore any erosion damage to the roadway embankment. Embankment maintenance shall also include unloading and placement of riprap in stream channels or in the surf zone.

2.2.3.B.6 Support of Production Track Grinding Authority may contract with other firm(s) to perform rail surface grinding. Contractor shall support production grinding provided by any Contractor(s) through the provision of flag persons or supervisors, operation of water truck, control of wayside or track fires, removal and re-installation of flange lubricators, and provision of water supplies for the grinding equipment as authorized by Authority under a CTO.

2.2.3.B.7 Flange Lubricators Contractor shall install and maintain flange lubricators as required by Authority. Contractor shall provide all repair parts and lubricants to maintain the flange lubricators consistent with manufacturer's specifications, to a level that keeps the gauge corner of the affected rail coated with a film of lubricant.

2.2.3.B.8 Roadway Signs Upon request of Authority, or as indicated in inspection reports, Contractor shall provide, replace, install, maintain, move, repair or remove roadway signs, which may

include mileposts, speed signs, “No Trespassing”, “No Dumping,” “Private Property” signs, passive crossing warning signs, temporary speed restriction signs and station signs located on the right-of-way. Repair will consist of correcting bent or broken posts, replacing missing fasteners and removing graffiti. Contractor shall maintain signage in accordance with the Engineering Instructions and Standards attached hereto at Appendix I and Appendix L.

2.2.3.B.9 Road Crossings Contractor shall inspect and maintain pedestrian and road crossings and the approaches up to 15 feet from the outermost track in accordance with Authority Engineering Instructions and Standards, CPUC General Orders, and manufacturer’s recommendations. Contractor will maintain longitudinal edge striping, pedestrian swing gates and railing or fences within 15 feet of the outermost track. Contractor shall respond to requests or complaints by members of the public or outside agencies by promptly investigating any such complaint and reporting all such requests and results of Contractor’s response in writing to the Authority. Contractor shall arrange for immediate repairs of critical conditions at crossings and shall consult with Authority on scheduling repairs of other conditions. Contractor shall arrange for traffic control of both highway and railroad traffic, including coordination of street closures and permitting, to protect persons performing repairs to crossings. Contractor shall (1) remove the crossing panels or surface; (2) resurface through the crossing; (3) re-install the crossing panels or other surface; and (4) repave the crossing approaches once every five years on tangent track and once every three years on curved track.

2.2.3.C. Structures Preventive Maintenance

2.2.3.C.1 General. Contractor shall perform all work in accordance with Authority’s Engineering Instructions and Standards as set forth in detail at Appendix I and Appendix L, Rules and Procedures for Bridge & Building Department as set forth in detail at Appendix U, AREMA recommendations, and if no applicable standard is set forth therein, to industry standards. Contractor shall obtain all permits required to perform preventive maintenance.

2.2.3.C.2 Steel Structures Contractor shall perform the following tasks on or relating to steel Structures, if indicated by inspection reports and/or upon Authority’s request:

- a. Bolt and rivet replacement
- b. Spot painting and corrosion control

- c. Deck repair/replacement
- d. Cleaning and adjustment of bearings
- e. Member replacement
- f. Structural welding
- g. Repairing or replacing walkways or wingwalls
- h. Cleaning and removal of all dirt, debris and trash from bridge seats and bridge caps.

2.2.3.C.3 Concrete Structures. Contractor shall perform the following tasks on or relating to concrete Structures, if indicated by inspection reports and/or upon Authority's request:

- a. Drilling and anchor bolting
- b. Crack sealing
- c. Repair or replacement of bearings
- d. Installing elements such as caps, girders, abutments, wing walls and securing fastenings
- e. Repairing or replacing walkways or wingwalls

2.2.3.C.4 Timber Structures. Contractor shall perform the following tasks on or relating to timber Structures, if indicated by inspection reports and/or upon Authority's request:

- a. Checking bolts
- b. Replacing members such as caps, stringers, piles and bracing
- c. Applying fireproof coatings
- d. Splicing and posting of piles
- e. Repairing or replacing walkways or wingwalls

2.2.3.C.5 Buildings & Facilities. Contractor shall perform the following tasks on or relating to buildings or facilities, if indicated by inspection reports and/or upon Authority's request:

- a. Repairs and touch-up painting to doors, windows, walls, floors, and ceilings

- b. Repairing, painting, demolishing or moving partitions
- c. Repairing HVAC, plumbing or electrical systems or equipment

2.2.3.C.6 Tunnels. Contractor shall perform the following tasks in or relating to tunnels, if indicated by inspection reports and/or upon Authority's request:

- a. Electrical repairs (including repairs to any tunnel lighting systems and pump systems)
- b. Repairs to pumps & drainage systems
- c. Concrete patching & repair of the tunnel lining

2.2.3.C.7 Culverts. Contractor shall perform the following tasks in or relating to culverts, if indicated by inspection reports and/or upon Authority's request:

- a. Cleaning and flushing of entire length of culvert
- b. Repairing or replacing head walls
- c. Constructing culvert extensions
- d. Removing brush and debris

2.2.3.C.8 Repairs – General. The following tasks are common to all types of Structures and Contractor shall perform such tasks if indicated by inspection reports and/ or upon Authority's request.

- a. Handrail repairs and/or replacement
- b. Jacking, shimming, and alignment corrections
- c. Erosion protection measures
- d. Providing support for track maintenance activities
- e. Providing support for construction activities
- f. Emergency restoration of facilities

2.2.3.C.9 Graffiti Abatement & Control. Contractor will control graffiti in accordance with the procedures set forth in detail at Appendix B through painting or cleaning on Structures, walls, fences, signs, bridges (as coordinated with Authority), and abutments. Graffiti control will be achieved by covering graffiti

using spray apparatus including adequate extension arm when needed, to apply water-based paint except on natural aluminum signal housings and roadway signs, where chemical cleaners will be used. Contractor will consult with Authority in situations where cleaning is ineffective, and Authority may at its discretion direct Contractor to utilize other cleaners or to apply aluminum paint. Application of paint or cleaning of graffiti will be performed strictly in accordance with Authority's instructions so as to preserve railroad-operating information on signs, and Structures (e.g. crossing identity numbers and telephone numbers at road crossings, speed signs and mileposts, and roadway signs).

2.2.3.C.10 Fences and Signage located in-between tracks. Contractor shall maintain fences located in between Tracks and signage mounted on fences located in between Tracks. Maintenance will consist of the following:

- a. Repair gaps or holes in any fence or railing
- b. Straighten leaning fences
- c. Clean debris, trash and remove graffiti
- d. Re-attach loose signage

2.2.3.D. Vegetation Control

2.2.3.D.1 General. Contractor shall perform vegetation control using Authority-specified pre-emergent and contact herbicides in order to maintain the railroad right-of-way within the Limit Lines free of vegetation. Incidental to other inspection, remedial repair, and preventive maintenance, Contractor shall, consistent with 49 CFR 213.37, remove vegetation that interferes with track or structure maintenance or inspection, and shall coordinate track, structure, and vegetation control maintenance with other Authority contractors who may be engaged in right-of-way or vegetation control. Such vegetation control Services will be performed in accordance with Authority's annual Service Plan. Contractor shall obtain all permits, licenses, and registration necessary to perform vegetation control Services.

2.2.3.D.2 Herbicide Application.

- a. Standard of Performance. The purpose of the work required by this Section is to obtain bare mineral ground between the Limit Lines and to obtain control of vegetation such that 90% of the ground between Limit Lines is bare mineral ground. The entire width

of right of way within 200 feet of any station or road crossing shall be maintained to a bare mineral standard. The presence of Bermuda type grass less than six inches in height beyond the Limit Lines shall not be counted as a failure to control vegetation.

- b. Quality Control, Measurement. Quality control shall consist of a random sampling of ½ acre parcels in each 10 miles of right of way. If the sample is found to contain more than 10% vegetation ground cover beyond the Limit Lines, or more than 2% vegetation ground cover within the Limit Lines, Contractor shall be required to spot treat the entire subdivision with contact herbicide. Authority may require the use of an approved colorant on some or all applications to verify coverage.
- c. Citations and Notices to Abate Nuisances. Contractor shall be required to spot treat locations with unlawful accumulation of vegetation that have been cited by public agencies.
- d. Limit Lines
 - 1. Limit Lines shall be determined for each individual segment of each subdivision, parcel, or lot, based upon specific local conditions and shall be identified in the Service Plan.
 - 2. Limit Lines may change during this Agreement term as field conditions change, by the addition and deletion of a Member Agency, or in coordination with license holder landscaping within the Service Property. Any such changes shall be addressed in the Service Plan.
 - 3. Applications in the area within the Limit Lines shall include applications at curb faces, adjacent to landscaped areas, parcels not accessible from railroad track, and parcels adjacent to waterways. These locations may require specialized application methods, including backpack or hose reel sprayers and/or 4-wheel drive non-Hy-Rail vehicles.
- e. Vegetation Control Service Requirements.
 - 1. The Track and Structures Service Plan shall define specific plans for each line or district of the

Service Property in recognition of the varied environments in Authority system. In order to meet the vegetation control program requirements, Contractor's California Licensed Pest Control representative and Authority's representative shall develop a specific schedule for vegetation control activities based on then-current assessed needs by October 1 of each year which shall establish (1) Limit Lines; (2) application rates; (3) equipment; (4) application schedule; and (5) chemicals to be used for the following 12 month period. Contractor shall make on-rail and off-road spray equipment available within ten (10) days from Authority's specified starting date for each application.

2. Contractor shall perform one comprehensive application of pre-emergent herbicide and one or two applications of post emergent herbicide annually in accordance with the annual vegetation control plan. Contractor shall perform all applications to completion taking into account railroad operations and weather conditions. Contractor shall apply herbicide at night to avoid conflicts with passenger train operations. Contractor shall at all times have possession and control of the chemicals used in performing any vegetation control activities. Unapplied chemicals are the property of Authority and are to be maintained and stored by Contractor in accordance with manufacturer recommendations and applicable regulations.

- f. Equipment. Contractor shall provide on-track and off-track spray application vehicles. Contractor shall identify equipment proposed for use in the Service Plan and shall include performance characteristics and capacities of the equipment. Authority may request inspection of the equipment prior to approving the plan. All equipment shall be capable of applying water/chemical mix at the rate of 50 gallons per acre at a travel rate of 15 miles per hour while operating on rail and 2.5 miles per hour while operating over ground. The operating pressure shall be between 25 and 40 pounds per square inch. On-track equipment shall be capable of applying chemicals for a distance of up to 50 feet from the edge of the outside rail.

- g. Licensed Personnel. All Contractor personnel engaged in managing or applying herbicides shall hold current California licenses for the level and type of work to be performed; equipment operators shall hold Applicator licenses and the Supervisors and/or Managers shall hold Pest Control Advisor licenses.

2.2.3.D.3
Removal.

Supplemental Manual or Mechanical Vegetation

- a. Support of Other Contractors. Authority contracts with other firms to perform removal of some vegetation. Contractor shall cooperate with and support these other Third Party Contractors as Authority directs.
- b. Incidental to Maintenance Activities. Contractor shall remove and properly dispose of vegetation and trash that interferes or may interfere with Railroad Operations and with other maintenance operations as a part of the general maintenance obligation. Examples of this include but are not limited to (1) removing potentially flammable vegetation before performing welding; (2) removing vegetation which blocks the vision of roadway signs or signals; (3) removing vegetation which interferes with walkways; (4) removing vegetation that may convey fire to timber structures; and (5) removing vegetation that interferes with track inspection or repair.
- c. Landscape Vegetation. Contractor is not required to remove decorative landscaping, erosion control vegetation, and natural vegetation in rural areas that is outside the Limit Lines unless directed to do so by Authority.
- d. Watercourse Maintenance. Contractor shall remove and properly dispose of vegetation, silt, drift, trash, brush or obstructions that may interfere with the discharge of water from channels on or crossing the right-of-way.
- e. Clean-Up of Debris and Trash other than Hazardous Waste. Contractor will typically pick up debris and trash within the Limit Lines on the Service Property, and will remove, place and dispose of vegetation and refuse utilizing portable 20-yard or 40-yard bins, as

necessary to accommodate such disposal, at specified dump sites. Materials to be removed may include, but are not limited to, broken concrete, asphalt, construction debris, scrap metal, furniture, appliances, automobile parts, shopping carts, trees, dead vegetation, or bagged or loose trash. Individual items will be handled manually within OSHA guidelines. Cranes or tractors will handle items exceeding the weights set forth in applicable OSHA guidelines. If Contractor has not provided its crew with a tractor, Authority may elect to authorize Contractor to rent a tractor, or may assign this item of clean up to a Third Party Contractor that is equipped with equipment reasonably satisfactory to Authority.

- f. Tree Trimming and Removals. Trees are located mainly beyond the Limit Lines. Tree trimming will be seasonal, dependent on growth and will be performed to maintain clear visibility of railroad signals and grade crossings. Contractor will provide labor and equipment necessary to clear areas where required in order to maintain the right-of-ways and signal posts unobstructed. The work will consist of tree trimming and removals, occasional tree replanting, pole line removal and transport and brush removal. Due to the inaccessibility of certain properties, some trees may need to be climbed with the aid of ropes and others bucket trimmed. Authority will provide a Hy-Rail tower truck where there is no access for a street tower truck.
- g. Supplementary Vegetation Removal. Contractor shall remove and dispose of vegetation as requested by Authority for situations not identified above, and shall be compensated in accordance with a CTO specifically issued to authorize Supplemental Work.

2.2.3.E. Pest Control. Contractor shall perform, on a case by case basis, reasonable pest control to maintain the railroad right-of-way free of pests.

2.2.4. Maintenance and Utilization of Authority Equipment

2.2.4.A. Contractor shall be provided with Authority owned vehicles and equipment as listed at Appendix E, except that Authority, in its sole discretion, may withdraw some or all of this equipment from service under this Agreement, in which case Contractor shall furnish

replacement equipment as listed in Appendix E and in accordance with the requirements of Section 2.2.5 below.

2.2.4.B. Authority furnished highway vehicles shall be operated by Contractor personnel, who are Qualified in accordance with the requirements set forth at Appendix D, who have their names listed on Authority's approved driver lists and who are trained in specialty equipment and attachments on their assigned vehicles. These personnel shall be covered by Authority's Drug and Alcohol Policy established in compliance with 49 CFR 219 attached at Appendix K, and Authority's DMV Pull Notice Program, attached at Appendix N, that allows Authority to retrieve up-to date information on the motor vehicle records for all employees and contractors.

2.2.4.C. Contractor shall troubleshoot, maintain, and repair Authority furnished equipment as listed under "Contractor Maintenance" on Appendix E. Except as specified in Section 2.2.4.D, below, maintenance and repairs shall be accomplished in accordance with equipment manufacturer's specifications, applicable regulations, and with due regard for economy of work and the provision of Services by Contractor's personnel. Contractor shall provide all parts, materials, and supplies used for such maintenance, unless otherwise directed by Authority. PM on Authority equipment will be performed by Authority's VMC. Contractor will be required to ensure that Contractor's staff ensures that the PM service is kept on schedule. Contractor shall provide replacement equipment on an as needed basis when equipment has been pulled out of service.

2.2.4.D. Contractor shall maintain the radio control and power actuating systems for the ballast discharge doors of Authority railroad ballast cars. Other maintenance of the car bodies and running gear (i.e., wheels, trucks, couplers, and brakes) of the ballast cars shall be the responsibility of the VMC and is not included in the scope of this Agreement. Contractor shall notify the VMC and Authority of any damage or defects on such equipment in order to make arrangements for repairs and the VMC shall coordinate with Contractor any scheduling of inspections or repairs such that Contractor's performance of Services is not unduly interrupted. If VMC and Contractor are unable to resolve any dispute that may arise in connection with their respective duties under this Section 2.2.4.D, VMC and Contractor shall submit such dispute to Authority Contract Manager for resolution.

2.2.4.E. Fuel and lubricants for Authority-owned highway vehicles will be provided by Authority.

2.2.4.F. Contractor shall maintain, in good working order, all equipment and machinery provided by Authority that Contractor uses to maintain the right of way, subject to ordinary wear and tear.

2.2.4.G. When directed by Authority, Contractor shall relocate Authority's equipment to other Authority or third party construction or maintenance projects on a short term basis and within the area served by Authority. Contractor shall assign an equipment operator to accompany and operate the equipment. When directed to do so, Contractor shall be reimbursed through a CTO for Contractor's direct cost actually incurred in connection with relocating and operating the equipment at Authority's request.

2.2.5. Provision of Supplementary Contractor-Provided Equipment. Contractor, upon notice by Authority, shall make any equipment identified on Appendix R available to Authority. On an as-needed basis, at the request of Authority, Contractor may be required to furnish pieces of equipment not listed in Appendix R. This equipment shall be subject to reassignment and relocation per Section 2.2.4.G above.

2.2.6. Provision of Materials and Supplies. Contractor shall provide material as required to support the Services as requested by Authority. Authority may, at its sole discretion, procure materials and supplies directly and furnish them to Contractor. Contractor shall comply with the requirements of Section 2.2.10, Material Management, with respect to documentation requirements for material and supply procurement.

2.2.7. Provision of Supplementary Services. In order to support the Basic Track and Structures Maintenance functions, Contractor may be required to provide supplementary services. These services may include but are not limited to (1) services for locksmiths; (2) electrical repairs; (3) plumbing repairs; (4) glazing; (5) contracted repairs to Authority equipment or property; and (6) safety services including, but not limited to, training, testing, and preparation of reports. Contractor will also obtain permits, and will provide transportation of Authority equipment. Authority shall authorize such services in advance, in writing. In the case of Extraordinary Work, Contractor must obtain Authority's written authorization within five days, in accordance with Authority policy.

2.2.8. Disposal of Authority Materials. Contractor shall dispose of Authority material in accordance with Authority's policy and applicable regulations. Small amounts of not more than 500 tons per month of scrap rail and miscellaneous ferrous scrap shall be sold by Contractor to firm(s) selected under a competitive method, in accordance with Authority's Contracts Administration and Procurement Policies, and will be removed from property using bins into which maintenance personnel deposit scrap material and credit to Authority for all scrap sales on each month's invoice. Contractor shall document sales of scrap material for adjustments to Authority's material inventory. Authority may donate scrap material to public or

non-profit agencies, and Contractor shall provide Services as necessary to accommodate such donations as Authority directs. Authority may advertise for bids to sell larger quantities of scrap or used material, and Contractor shall support such bidding and sales activities as Authority directs.

2.2.9. Communications / Mobile Telephones / Electronic Authority Exchange (EAX) Laptops

2.2.9.A. Contractor shall furnish mobile telephones and two-way digital radio communication equipment to each work unit as defined in the Service Plan. Contractor shall configure the two-way radio system to permit direct communication with Authority staff and with C&S Maintenance Contractor and Train Operation Contractor. These communication devices and services shall be used both for the management and administration of the Services by Contractor and as a means of communication between Contractor staff and personnel of Authority and its other contractors, and to the public. The cost of all two-way digital radios and mobile telephones for Contractor work units shall be included in the FBLC. If Contractor furnishes any mobile telephone or two-way digital radio communication equipment for use by Authority staff or other Authority contractors, Contractor will bill the cost of such equipment provided for the use of persons other than Contractor personnel as a Direct Cost.

2.2.9.B. Laptops furnished by Authority for Digicon Electronic Authority applications will be assigned to appropriate Contractor personnel once the EAX system is fully deployed. Each employee will be solely responsible for the use and safe keeping of any device issued to such employee. These laptops must be received by the employee assigned at the close of duty and Contractor will be responsible for replacing any lost or damaged laptop, peripheral or other EAX-related device.

2.2.10. Material Management

2.2.10.A. General. Contractor shall be responsible for and shall manage the planning, purchasing, storage, distribution and control of all materials required to perform the Services under this Agreement and, if so directed by Authority, to support Authority's capital programs. Contractor shall provide for sufficient personnel to perform the materials management and inventory control functions required for the performance of these Services. All materials or equipment purchased by Contractor pursuant to this Agreement for the provision of the Services shall be used solely for the purpose of providing Services under this Agreement and shall be the property of Authority.

2.2.10.B. Emergency Supplies. In emergency circumstances where material needed for provision of the Services is not available from Authority's supplies but is available in Contractor's inventory maintained locally or is quickly available from any other source, Contractor may use such material or supplies to provide the Services. Authority shall reimburse Contractor for the Direct Costs incurred to replace any such parts or supplies.

2.2.10.C. Purchasing Decisions. In making purchasing decisions, Contractor shall exercise sound business judgment as to the need to purchase any item. Contractor shall purchase, where prudent and cost-effective, from local vendors, but shall in all circumstances take into account and give full consideration to factors to include, but not be limited to: price, delivery schedule, freight charges and all applicable federal, state and local regulations. Contractor shall follow a competitive bidding process in accordance with the requirements listed in FTA Circular 4220.1E, including solicitation of bids from at least three sources for any purchase over \$2,500 and maintaining documentation to support competitiveness and reasonableness of price, including adequate justification for any sole source purchases.

2.2.10.D. Asset Management System. Contractor shall use Authority's Asset Management Software. Authority currently uses Maximus FA Suite for materials management and inventory control. Contractor shall also use this system (1) to control, account for, and document material purchased by Authority for use in New Capital, R&R and Recollectable Work and (2) in connection with any and all other Authority-owned assets. Contractor shall store and control Authority-owned material in conformance with Authority's Materials Management Policies and Procedures as set forth at Appendix W, attached hereto, and consistent with best industry practice.

2.2.10.D.1 Using Maximus FA Suite and accepted best business practices for inventory and procurement activities, Contractor shall, at a minimum:

- a. Create and maintain purchasing and purchase order receipt information in the inventory system.
- b. Use the system to accumulate historical data on material usage, procurement (including vendors, material cost and lead time), inventory levels and value.

- c. Facilitate the availability of material to support the maintenance of way program by minimizing stock outages.
- d. Ensure inventory accuracy to acceptable levels as described in detail at Appendix W.
- e. Recommend order quantities through the use of appropriate replenishment models based on the data referenced above in Section 2.2.10.D.1.b.
- f. Perform scheduled cycle counts as described at Appendix W.
- g. If required, perform an annual physical inventory of all inventoried materials as described at Appendix W.
- h. Create and submit to Authority for review a monthly Inventory Position report which includes material usage, orders, receipts, cycle counts, adjustments and other inventory-related transactions.

2.2.10.D.2 Contractor shall ensure that its operational accounting system interfaces with Authority's asset management software to generate all financial and inventory reports required as set forth at Appendix Q and Appendix W.

2.2.10.E. Controllable Items. In the event the need arises to purchase a Controllable Item, prior approval shall be obtained from Authority Contract Manager and final approval from Authority Contract Manager with final approval from the Manager, Contracts Administration and Procurement. Certain items including trucks, automobiles, personal computers, printers, software, cellular phones, hand radios, cameras (excluding those commonly referred to as "disposable"), office machines, or items requested by Authority will be procured in accordance with Authority's policies for procurement of similar items and shall require Authority's prior approval. Such approval shall be deemed to have been given if the item is included and itemized in the current year's Approved Budget (including backup documents showing detail of items included in the current year's Approved Budget), and the purchase price does not exceed the budgeted amount specified therein.

3. CONTRACTOR'S RESPONSIBILITIES

3.1. GENERAL

Contractor shall perform the Services as described in this Agreement, and will require the performance of its employees and Subcontractors to be consistent with the best railroad industry practice, including adjustments to maintenance practices as such industry practice may change during the life of this Agreement, in a manner to protect the safety of the public and to preserve the economic life of the Service Property. In performing the Services, Contractor shall ensure that at least sixty percent (60%) of the Services will be performed by its own employees and that no more than forty percent (40%) of the Services will be performed by Subcontractors or their employees.

3.1.1. Applicable Standards. The minimum standards for track maintenance and employee safety are the FTSS and the FRWS, respectively. In cases where Authority Track Maintenance and Engineering Instructions and Standards, Contractor's approved application of best industry practices or other written instructions require a higher standard of maintenance, the higher or more stringent standard shall apply. For the purposes of FTSS and FRWS, Authority will be considered—the "owner" of the track and Contractor will be considered the "employees qualified to perform work and inspections under these regulations". This designation of "owner" and "employee" applies only within the context of interpreting these regulations. The designation of Contractor as "employee" for the purpose of these regulations does not alter Contractor's independent contractor status.

3.1.2. Extraordinary Work Emergency Situations. In the event of an emergency, Contractor shall respond with all resources needed to restore safe operating conditions and restore regular railroad service, consistent with other maintenance and safety obligations. Contractor shall cooperate fully with any investigation regarding an emergency situation. Contractor's employees shall assist in any public emergency in a manner that is not in conflict with railroad requirements.

3.1.3. Protection of the Public. Contractor's employees shall perform their duties, including operation of motor vehicles on public or private roads, and control of dust and noise, in compliance with all applicable laws and with due respect for members of the public and shall safeguard the public at all locations where Contractor performs Services. Where Contractor's employees are required to gain access to Authority property through or over private property, they shall cooperate with every legitimate request of such property owners in order to maintain such access privilege.

3.1.4. Protection of Authority Property. Contractor's employees shall perform their duties in a manner which preserves the security of Authority right-of-way and which protects Authority property from theft or loss due to fire, corrosion, or other damage. Contractor's employees shall perform their duties in a manner that makes maximum practicable efficient use of Authority materials. Specific actions under this Section include but are not limited to (1) keeping gates locked; (2) reporting acts of theft and vandalism to Authority; (3) keeping material in original or other secure containers; (4) keeping sensitive material out of the weather; (5) keeping new,

secondhand, and scrap material sorted and in secure areas; (6) keeping new and secondhand steel and treated wood on blocking and not in contact with the ground; (7) making efficient use of secondhand material where appropriate; (8) using good judgment to sort secondhand and scrap material; (9) planning for delivery of materials to minimize re-handling at worksites; and (10) properly securing loads on highway trucks or rail vehicles.

3.1.5. Use of "METROLINK"® Logo. Contractor shall obtain written authorization from Authority prior to using the "METROLINK" logo or name for any reason, including on any durable good or garment or in any promotional literature. Should Authority grant written authorization for Contractor's use of the "METROLINK" logo or name, Contractor shall not use any such mark or logo without first giving Authority the opportunity to review the copy and reject any use of the mark or logo that does not meet with Authority's approval.

3.1.6. Changes to Service Property and Authority Equipment. Contractor shall make no changes to the Service Property office or storage space, or to Authority equipment to be used in providing the Services without Authority's prior written approval.

3.1.7. Violations of GCOR and Safety Regulations, Train Accidents, Injuries to Persons, Damage to Property. Contractor shall cooperate fully in any investigation of reports of accidents, injuries, damages, or violations of GCOR or regulations. Contractor shall pay and shall defend, indemnify, hold harmless the Authority from and with respect to all fines or penalties levied by any regulatory agency for any violation of any applicable Federal, State or Local law or regulation attributable to a negligent act or omission of Contractor's employees or Subcontractors. These costs are not reimbursable.

3.2. MANAGEMENT OF THE TRACK, STRUCTURES AND RIGHT-OF-WAY MAINTENANCE FUNCTION

3.2.1. Maintenance Contract Manager

3.2.1.A. Contractor's MCM shall be subject to the following requirements:

3.2.1.A.1 Subject to Authority's prior written approval, Contractor shall designate a full-time MCM who will have the qualifications specified in detail as set forth at Appendix D. The MCM shall be Authority's point of contact for the management, administration, and supervision of this Agreement, will be dedicated full time to the management of the Services and shall be available on an on-call basis 24 hours per day, 7 days per week. Contractor shall not request or require the MCM, during the term of his or her employment as MCM under this Agreement, to undertake any duties or responsibilities for any other project or matter on which

Contractor is employed when such duties or responsibilities would prevent the MCM from being available to Authority on an on-call basis 24 hours per day 7 days per week.

3.2.1.A.2 If Authority is dissatisfied with the performance of the MCM, and following consultation between Contractor's appropriate corporate officer and Authority's Director of Engineering, Contractor shall remove the MCM immediately from assignment to this Agreement, and name an interim MCM, acceptable to Authority, within thirty (30) calendar days. A permanent replacement to be approved in writing by Authority shall be in place no later than ninety (90) days after the removal of the MCM. Contractor shall not otherwise transfer or reassign a MCM until a replacement approved by Authority has accepted the position and is available to begin work in that position. Liquidated damages as listed in Section 23.3. will be assessed for each calendar day the MCM position is not filled after thirty (30) calendar days from the date that the MCM is removed.

3.2.1.A.3 The MCM shall attend service meetings with Authority staff and others, as required or at Authority's request.

3.2.1.A.4 When scheduling any absence from the MCM position during which time the MCM will be unavailable to perform the duties required of the position, the MCM together with Contractor shall ensure that a person that is Qualified to fulfill all of the responsibilities of the MCM is available and designated for that purpose. MCM shall advise Authority of the identity, location, email address and phone numbers where that person may be reached at all times during the period that the MCM is away.

3.2.1.B. Contractor shall select replacement personnel to fill all key positions reporting directly to the MCM. These personnel shall be Qualified in accordance with personnel qualifications as set forth in detail at Appendix D, and all such candidates shall be subject to Authority's prior approval.

3.2.1.C. The MCM shall have the authority to discharge and replace all Contractor maintenance staff performing Services under this Agreement that do not meet Authority's standards, as set forth in detail at Appendix D.

3.2.1.D. The MCM has sole responsibility to manage, control, direct, and provide instructions to Contractor's and Subcontractor's maintenance staff.

3.2.1.E. The MCM shall organize and schedule Contractor's Exempt Employees as well as Contractor's Covered Employees so that Authority's Service area has coverage 24 hours a day, 7 days a week, 365 days a year.

3.2.2. Other Management Personnel. To ensure continuity in the provision of the Services, Contractor shall not transfer the MCM, or any personnel who report directly to the MCM and are assigned to providing the Services, from their assignment for at least one (1) year, except: (1) as required by applicable law or regulation; (2) as allowed as otherwise provided in this Agreement; or (3) with the written consent or at the request of Authority.

3.2.3. Hiring, Training, Qualifying, and Assignment of Staff. Contractor is responsible for the hiring, training, and qualifications of Contractor personnel to meet the standards set forth in detail at Appendices C and D. Contractor shall furnish training for all Contractor personnel for territory qualifications and for FRWS, for annual re-certification of GCOR and FRWS and for use of Authority forms and equipment in accordance with Appendix C. At the request of Authority, Contractor shall also provide training and testing of other non-Contractor personnel and Authority's staff. Authority will monitor Contractor personnel during training and after completion of training. Contractor will only permit personnel with a passing grade in any training session to perform Services under this Agreement. Contractor shall make available to Authority for review and acceptance all documents related to employee training in accordance with the requirements set forth in detail at Appendix C. Contractor shall furnish personnel meeting the standards set forth at Appendix D upon the initiation of Services, and shall furnish like Qualified personnel to fill any personnel vacancies. Contractor shall provide with its annual budget submittal all training schedules and associated training costs for Authority's approval. Authority will certify and approve any Contractor training of employees other than Contractor employees. Contractor is responsible for certifying Contractor's own employees.

3.2.4. Organization of the Maintenance Forces. Contractor shall develop and include in the Service Plan an organizational structure for the Track and Structures and right-of-way maintenance workforce. This structure will define necessary reporting relationships, territory assignments, and position titles, and shall include a telephone and radio contact list for each person listed. Contractor must provide written provisions for after-hours and emergency response to problems.

3.2.5. Responses to Extraordinary Work Requirements. Contractor shall provide maintenance and support personnel and resources to respond in a timely manner to Extraordinary Work requirements. Requirements of this Section include providing and maintaining telephone contact information with Key Staff to include home telephone numbers, status of availability of Key Staff on weekends and holidays, and maintenance of contacts with suppliers of rental equipment and emergency supplies.

3.2.6. Coordination with Others. Contractor shall support Authority's work arrangements with other agencies and contractors. Specific examples of situations where coordination is required include, but are not limited to (1) support for installation, repair, testing, adjustments or retirements to the signal system, including power and hand-operated switches; (2) support and flagging for work performed in public streets at crossings, maintenance or installation of utilities in the right of way; (3) track installation, rehabilitation, or removal by other Authority contractors; and (4) repair or recovery of track outages if actions by others cause damage to any Authority facilities.

3.2.7. Mobilization

3.2.7.A. During the Mobilization Period Contractor shall assemble and organize the work force, support functions, and equipment in accordance with the work plan submitted and approved in the proposal process.

3.2.7.B. The mobilization plan shall, at a minimum, include:

3.2.7.B.1 Staffing plans and organization plans;

3.2.7.B.2 Employee hiring plans, associated start dates for each employee, and Contractor's plan for complying with the requirements of Section 37.2.2;

3.2.7.B.3 Training program, including (1) course descriptions; (2) training schedules; (3) training manuals; (4) competency tests; (5) territory qualification plans; (6) Subcontractor training plans and schedules; and (7) re-qualification plans. At a minimum all courses listed at Appendix C must be included.

3.2.7.B.4 Transition and service continuity plans;

3.2.7.B.5 Identification of temporary physical location and logistics;

3.2.7.B.6 Specifics regarding any access required to Authority's Service Property;

3.2.7.B.7 Specifics regarding support required from Authority staff or other contractors;

3.2.7.B.8 Installation and connectivity plan for computer systems;

3.2.7.B.9 Quality control; and

3.2.7.B.10 Schedule for delivery of (1) the SSPP; (2) a disaster and emergency response plan; (3) all government compliance programs; and (4) budget for Services.

3.2.7.C. Contractor shall mobilize and train sufficient personnel to adequately provide Services outlined in Authority's anticipated Year 1 model, and shall deliver to Authority a mobilization plan within thirty (30) days of the later of (1) the Effective Date of this Agreement, or (2) delivery of Authority's Service Plan. Authority shall review Contractor's proposed mobilization plan and, subject to any modifications required by Authority, approve the plan no later than thirty (30) days from Authority's receipt of the plan. Mobilization costs incurred by Contractor prior to January 1, 2009, must be billed to Authority on or after January 1, 2009. Payment of mobilization costs will be made in thirty-six (36) equal monthly installments beginning thirty (30) days after the Start Date. Authority will not pay interest, G&A Overhead or Profit on the mobilization costs. If Contractor is terminated by Authority prior to full reimbursement of mobilization costs, Authority will continue to pay the remaining monthly reimbursement amount to Contractor on the same schedule as if this Agreement were still in force.

3.2.7.D. Contractor's staff shall be trained and Qualified on the SCRRA Territory, GCOR, FTSS, and FRWS by Contractor during the Mobilization Period. Contractor shall provide such training and Authority will pay Contractor the FBLC for the personnel being trained and Qualified. Personnel currently Qualified on Authority Service Property, FTSS, GCOR and FRWS need not be retrained or re-Qualified in order to perform Services.

3.3. SAFETY MANAGEMENT

3.3.1. General. Contractor shall adhere to Authority's most current SSPP in all respects and shall manage and coordinate safety through the assignment of a full-time Safety Manager. Authority may amend the SSPP from time to time and will provide updated copies to Contractor. Upon receipt of such updated copies, the amended SSPP shall be attached by Contractor as Appendix K to this Agreement until such time as it is updated and provided to Contractor subsequently by Authority.

3.3.2. Safety Manager. The detailed requirements for the Safety Manager position are set forth at Appendix D. The Safety Manager shall support and provide independent audits and assessments of the training and qualification of personnel, shall support and coordinate documentation related to the SSPP, and shall monitor the safety of Contractor employees in the performance of Services. The Safety Manager shall be available to support Contractor personnel at night, on weekends, or during the performance of Extraordinary Work and will report any personal injury

in accordance with the requirements of 49 CFR 225, Railroad Accidents/Incidents, the version of which is current as of the Effective Date of this Agreement is attached hereto at Appendix F. The Safety Manager shall develop a safety program for maintenance services reflecting best practices in the railroad industry.

3.3.3. Safety Plan Compliance Procedure. Contractor shall develop its own safety plan and employee rule book and instructions in accordance with the requirements set forth at Appendix C, which shall be reviewed and, if acceptable, approved by Authority at least thirty (30) days prior to commencement of Services, and which shall, at a minimum (1) address employee safety and safety of track employees; (2) set forth a hazard and risk assessment process; and (3) set forth requirements for employee safety committees. This plan shall be reviewed and any changes to the plan shall be submitted to Authority for review and approval. Contractor's safety plan shall be updated as necessary to be consistent with Authority's most current SSPP.

3.3.4. Drug and Alcohol Testing. Contractor shall comply with Authority's approved drug and alcohol testing procedures, as Authority may amend such procedures from time to time during the term of this Agreement. Nothing in this Agreement shall prevent Contractor from administering a drug and alcohol management or testing protocol that exceeds the standards set forth in Authority drug and alcohol testing program. Contractor shall administer a pre-employment drug and alcohol program for all Contractor employees providing the Services.

3.3.5. System Safety Plan. Contractor shall monitor and revise its internal system safety plan for consistency and compliance with Authority's SSPP and to achieve railroad industry best practices for system safety. Contractor will distribute and train all Contractor's employees using Contractor's system safety plan. Contractor's system safety plan shall be updated as needed to remain consistent with Engineering Instructions and Standards.

3.3.6. Training Records (Quarterly Report). Contractor shall provide, in accordance with the requirements set forth at Appendices C and D, reports of all training performed quarterly, including the titles of all courses, course descriptions, hours and attendees. Contractor's report shall include a summary of courses passed or failed for all attendees, along with a list of trained employees who have left Contractor's employ. This report shall be submitted on a quarterly basis to Authority Contract Manager. Every quarter, Contractor shall update the Annual Training Schedule to include actual dates of training. Contractor shall include all reports related to training listed on Appendix Q with Contractor's annual budget submittal.

3.4. QUALITY CONTROL

3.4.1. Materials. Contractor represents and warrants that in the course of providing the Services, Contractor will use the highest quality materials that are consistent with best industry practices and Authority's standards at the time that the

materials are purchased and will be in full compliance with: all applicable federal, state and local regulations; Authority's Track Maintenance and Engineering Instructions and Standards as such standards may be amended from time to time during the term of this Agreement; and, applicable rules and standards of AREMA as such regulations, rules and standards are in effect at the time of the use of the materials in the performance of the Services. Contractor further represents and warrants that Contractor will perform the Services in accordance with the warranties set forth in Section 3.5 below.

3.4.2. Quality Control Plan. Contractor shall, within ninety (90) days after the execution of this Agreement, submit a QCP that includes at least the following elements:

3.4.2.A. A copy of Contractor's approved and final corporate-wide quality control plan.

3.4.2.B. A detailed explanation by Contractor of how it will determine that materials used will comply with the representation and warranty as set forth in Section 3.4.1 above, and the steps it will take to ensure continued compliance with this obligation throughout the term of this Agreement.

3.4.2.C. A plan for documentation of compliance with the QCP, which shall include at a minimum the submission of monthly reports not later than the 20th day of each month following the conclusion of the month that is the subject of the report. Each monthly report shall include:

3.4.2.C.1 Documentation demonstrating that materials purchased during the reported month comply with the commitment stated in Paragraph 3.4.1, above;

3.4.2.C.2 Copies of reports of the following inspections completed during the month:

- a. Track inspections required by 49 CFR 213.233.
- b. Turnout and crossing inspections required pursuant to 49 CFR 213.235 and Sections 2.2.1.B and C.
- c. Rail inspections required pursuant to 49 CFR 237.
- d. Special inspections for unusual conditions required pursuant to 49 CFR 239.
- e. Any inspections performed by or with FRA or PUC personnel.

- f. Any inspections performed with Track Geometry Cars.
- g. Any track inspection or observation performed by Contractor personnel by riding trains.
- h. Any inspection of Structures.
- i. Any acceptance inspection of work equipment.
- j. Property inspections, citations, or notices issued by governmental or quasi-governmental authorities and related to property or right of way maintenance.
 - 1) Identification of any rail defect service failures discovered during the month, with information on Remedial Action and disposition of failed rails.
 - 2) Responses to action items contained in Authority's quality review inspection reports submitted to Contractor during the month.
 - 3) A summary of all Contractor staff actively employed in performing the Services during the month that lists their current training and qualifications. This Section may be satisfied by submitting the most recent Authority listing of employees, annotated and endorsed by the Maintenance Contract Manager.
 - 4) A summary of any efficiency tests, efficiency test failures, accidents, and/or personal injuries to Contractor personnel.
 - 5) A summary of any training performed during the month.
 - 6) Documentation of individuals trained and/or tested shall be furnished to Authority immediately upon completion of training/testing.

3.4.2.D. Authority and Contractor's staff, and their designees, shall meet quarterly to review the previous three months of QCP reports, the general state of the condition of the property, the state of training of Contractor staff, any efficiency test failures or accidents resulting in vehicular or personal injury during the period.

3.4.2.E. The monthly QCP report is a required deliverable under this Agreement. Each month, Contractor shall be assessed Liquidated Damages for late or incomplete reports because the failure to timely provide complete reports will be detrimental to Authority, and the injury to Authority will be difficult to quantify. The Liquidated Damages assessed shall be in an amount that is equal to 10% of the compensation that is attributable to compliance with the QCP (as long as such compensation is a line item in the annual budget). Each month, Authority shall reduce such compensation by 10% for each working day that the report is late, and by 10% for each segment of the required QCP report that is not complete. The maximum Liquidated Damages assessed for incomplete and/or late reports shall not exceed 100% of the line item amount for compliance with the QCP.

3.5. WARRANTY OF SERVICES

3.5.1. Contractor warrants that all Services shall be performed in a good and workmanlike manner, in compliance with all applicable federal, state and local laws, regulations or other valid orders of a governmental agency, applicable professional standards and the standard of performance set forth in Article 21 of this Agreement. Contractor warrants further that all parts and materials used in provision of the Services shall be fit for the purposes for which such parts and materials are intended and shall satisfy Contractor's representation and warranty in Section 3.4.1. Contractor shall employ a sufficient number of skilled and Qualified employees to perform the Services.

3.5.2. Contractor shall be responsible for taking any corrective action required to satisfy all warranties required pursuant to the terms and conditions of this Agreement. Within ten (10) days of Contractor's discovery of, or receipt of notice from Authority of, a breach of the foregoing warranties, Contractor shall at its sole expense remove, repair and/or replace any non-conforming work, including parts and materials used in that work, and shall bear the cost of repair or replacement of any other portions of the Service Property or work performed by any other contractor, that is damaged by Contractor's non-conforming work. Contractor shall re-execute at no cost to Authority any work which does not comply with applicable laws, regulations, orders or professional standards or which has not been done in a good and workmanlike manner. Contractor's obligations under this Section 3.5 shall continue for one year after completion of the Services.

3.5.3. If Contractor fails to perform its obligations under this Section 3.5 within a reasonable time and to the reasonable satisfaction of Authority, Authority shall have the right to correct and/or replace any work or materials which are defective or which do not comply with the standards stated in Section 3.5.1. Contractor shall fully reimburse Authority for any expenses incurred by Authority hereunder, including Authority's overhead costs.

3.5.4. Contractor may use equipment provided by Authority to perform work required to correct or address breaches of the warranties provided in this Section 3.5, provided that such use and the performance of that work does not interfere with the work of Authority or any of Authority's other contractors.

3.5.5. Notwithstanding any of the foregoing, in the event that Contractor's work or the work of a Subcontractor is not in compliance with this Agreement and creates a hazard to the public health or safety or the safety of Authority's employees or other contractors and their employees, Authority may undertake at Contractor's sole expense and without prior notice, all Services necessary to correct such hazardous situation.

3.5.6. Contractor shall require any Subcontractor to undertake the same obligations to Contractor as Contractor is required to perform for the benefit of Authority as set forth in this Section 3.5.

3.6. REPORTING REQUIREMENTS

3.6.1. In addition to documentation required with Contractor's monthly invoices, Contractor shall provide Authority with the reports at the frequencies listed at Appendix Q to this Agreement. Contractor shall prepare and submit all data and reports affecting the Services to Authority as needed to satisfy requirements for submission of information or reports to any federal, state or local governmental agencies. Contractor shall keep complete and accurate records, and shall provide Authority with such other reports or information as shall fulfill the purpose described in the previous sentence. All reports prepared pursuant to this Agreement shall be the property of Authority, and Contractor shall not voluntarily release or disclose any of the contents of those reports without the prior written approval of Authority.

3.6.2. Contractor will, in the most expeditious manner, provide an initial report to Authority Manager of Safety and Security and to Authority Contract Manager, of any reportable personal injury as so designated by the FRA, no matter how slight, to a Contractor employee. Contractor must supplement such initial report with reports that provide additional details of medical treatment or estimated disability, cause of the accident, or other significant factors relating to the accident to the above-listed Authority personnel. Contractor shall make such initial and follow-up reports by telephone. If Contractor is unable to establish contact with the above Authority personnel within four (4) hours of any accident, Contractor must notify other Authority personnel in Authority Contract Manager's department, explaining that Contractor is providing the report as an initial report of the accident due to Contractor's having been unable to report such to Authority's Manager of Safety and Security and Authority Contract Manager. Within seventy-two (72) hours of the incident, two written reports describing the occurrence, disability, and medical treatment shall be submitted, separately addressed to Authority's Manager of Safety and Security and Authority Contract Manager. The reports required under this Section 3.F.2 are necessary for Authority to comply with 49 CFR 225, Railroad

Accidents/Incidents: Reports, Classification, and Investigations, a copy of which, current as of the Effective Date of this Agreement, is attached at Appendix F.

3.6.3. At the end of each calendar month Contractor shall submit two copies of a written report of each personal injury and a summary of the injuries to date for the year. Contractor shall submit such personal injury report separately to Authority's Manager of Safety and Security and to Authority's Contract Manager and will include the current status of each injured employee, including summary of medical treatment received, summary of any restricted duty or lost work days, and current employment status.

3.6.4. Contractor shall promptly notify Authority whenever Contractor becomes aware that representatives of any government agency are present on the Service Property. Contractor shall also promptly furnish to Authority copies of any citations, complaints or reports in draft or final form issued by any enforcement or regulatory body which directly or indirectly affect the Services or the Service Property. Contractor shall promptly advise Authority of the disposition of such citations or complaints not handled directly by Authority.

3.6.5. Contractor must provide Authority a monthly QPIP report to indicate Contractor's progress toward earning incentives as described in Section 6.B.4. The QPIP will be used to develop the Performance Goals that Contractor may earn beginning in the second year of Contractor's performance of this Agreement. Authority will allow or disallow incentive payments on the basis of Authority's evaluation of Contractor's QPIP reports. Contractor shall submit the QPIP report no later than the 10th working day of each month. The QPIP will be signed by Contractor's MCM and submitted to Authority's manager of maintenance of way.

3.7. PERSONNEL REQUIREMENTS

3.7.1. Hiring, Removal and Disciplinary Policy

3.7.1.A. Hiring

3.7.1.A.1 Contractor is responsible for providing, as further described in Appendices C and D, a trained and Qualified workforce to perform the Services. Contractor shall hire all labor, administrative, professional, and supervisory personnel required to provide the Services in accordance with the requirements of this Agreement. Authority reserves the right to approve or disapprove Contractor's Key Staff. Approval by Authority shall not be unreasonably withheld, and Authority shall take all necessary steps to ensure that approval is granted in a prompt manner. In addition, Contractor agrees that it shall, to the maximum extent possible, take all necessary steps to ensure continuity over time of the membership of the group constituting Contractor's staff and, in particular, Contractor's Key Staff.

3.7.1.A.2 Contractor shall fill any staff vacancy within thirty (30) days with personnel having qualifications at least equivalent to those of the staff member(s) being replaced.

3.7.1.B. Removal

3.7.1.B.1 If Contractor should ever need to remove any Key Staff from performing Services under this Agreement, Contractor shall obtain prior written approval of Authority and shall work with Authority on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Approval by Authority shall not be unreasonably withheld, and Authority shall take all reasonable steps to ensure that approval is granted promptly. Notwithstanding the preceding two sentences, if Contractor needs to remove Key Staff from performing Services under this Agreement as a result of terminating the employment of any Key Staff, Contractor shall not be required to obtain Authority's prior written approval. However, Contractor shall provide Authority with adequate notice, except in circumstances in which such notice is not possible, and shall work with Authority on a mutually agreeable transition plan, as to such other Key Staff so as to provide an acceptable replacement and ensure project continuity. Notice under this Section shall be provided to Authority's Contract Manager and other Contractor or Authority staff members identified by Authority.

3.7.1.B.2 With regard to any individual providing Services on behalf of Contractor under this Agreement, if Authority believes that such individual(s) is impairing performance under this Agreement, Authority shall notify Contractor and Contractor shall immediately address the performance of such person, or, at the request of Authority and consistent with Contractor's collective bargaining agreements and other relevant legal authorities, Contractor shall remove such person from providing Services. In cases affecting the safety of employees, the public, or railroad operation, such removal shall be immediate. Notwithstanding the above, Authority shall not unreasonably request the removal or replacement of any individual providing Services on behalf of Contractor under this Agreement.

3.7.1.C. Contractor's Disciplinary Policy. Contractor and Contractor's key Subcontractors shall develop and maintain a disciplinary policy as an integral part of each of their personnel policies. Contractor's disciplinary policy shall emphasize a combination of training, education and discipline. Contractor's disciplinary policy shall be consistent with current railroad industry and National Railroad Contractors disciplinary policies as well as the other SCRRRA Service

contracts (i.e., Operations, Equipment Maintenance, and Communications and Signals Service contracts). The National Railroad Contractors guidelines and recommendations contained in the "Model Safety Program for Rail Contractors" should be used as a guideline for establishing an effective disciplinary policy. In addition, the FRA's June 30, 1998 Synopsis of Railroad current disciplinary policies shall be taken into consideration in establishing Contractor's employee disciplinary policy. Contractor, on an annual basis, shall submit its employee disciplinary policies to Authority for review and acceptance. Contractor shall inform Authority of any Contractor disciplinary actions against any Contractor or Subcontractor employee as a consequence of violation of safety practices or policies.

3.7.2. Labor Agreements

3.7.2.A. General. Nothing contained in this Agreement shall require Contractor to perform any service or take any action that would violate any labor agreement, law or regulation. Authority does not accept, succeed to or assume, and this Agreement shall not be construed to impose or allow any acceptance, succession to or assumption of, any obligations of Contractor under any of its collective bargaining agreements with its employees or their representatives. Contractor shall use all applicable agreements in place with its employees or their representatives to obtain any and all available cost and other efficiencies in the work force that can be derived from such practices to the benefit of Authority.

3.7.2.B. Rule Changes. Authority shall not be required to reimburse Contractor for any cost increases related to work rule changes, whether in the year the changes become effective or in any subsequent Fiscal Year unless the changes are the result of a change in law and mandated to be paid by Authority.

3.7.2.C. Picketing. Contractor's agreement with any bargaining unit shall include a no-strike clause or, in the alternative, a clause that requires the employees covered by that agreement to complete all of the dispute resolution procedures in that agreement and required by applicable law before engaging in any self-help actions. If employees of Contractor picket facilities of Authority, or lawfully honor a picket line of another union at an Authority facility, in connection with a labor dispute of any kind, and if Contractor is unable to provide normally scheduled Services, Contractor shall reimburse Authority for legal and related expenses, including but not limited to attorneys fees, incurred by Authority in its efforts to terminate such picketing. To the extent that such picketing or honoring such picket lines disrupts the operation of Authority

Commuter Railroad Operations, Contractor shall reimburse Authority for any and all costs related to the service disruption. If picketing activities cause Contractor to incur any additional costs in meeting its obligations under this Agreement, there will be no reimbursement by Authority of such additional costs.

3.8. TRAINING REQUIREMENTS

3.8.1. Training of Employees. Contractor shall provide, administer and maintain training programs, consistent with the requirements set forth at Appendices C and D, which address, at minimum, required aspects of safety and personnel qualifications, except for Authority-provided training per Section 3.8.1F below. Contractor training programs shall be conceived to provide the best industry practices and highest quality service to the public, with the policies of and in the best interest of Authority, and in accordance with all applicable federal, state, and local laws, regulations and requirements. The training programs shall be designed to ensure that all employees are Qualified to perform the functions necessary for their positions. All of Contractor's personnel providing Services must complete, at a minimum, Contractor-provided training relating to FRWS, GCOR, and FTSS prior to such personnel performing any Services.

3.8.1.A. Contractor-Provided Training. Contractor shall provide Authority with copies of all training programs provided in connection with this Agreement. Authority will review and approve all training and re-qualification programs prior to such programs' implementation. All such training programs must consist of classroom instruction, field exercises or demonstrations, and written testing and successful demonstration of applicable skills. Contractor shall provide Authority with a monthly training report that includes summaries of specific programs and labor-hours spent in each training session. In addition, the report shall identify the number of employees taking the training courses and the pass/fail history for each completed program.

3.8.1.B. Qualification and Testing. Contractor shall require its employees to be re-Qualified for their positions within the time frames specified at Appendix C, and shall provide appropriate training, at Contractor's expense, for any employee who fails such a re-Qualification test. If any Contractor employee fails to complete the training and pass such a test within two (2) months or fails the test on two (2) occasions (whichever first occurs), Contractor shall remove such employee from his or her existing job classification.

3.8.1.C. Third Party Training. Contractor, at the request of Authority, shall provide training to Authority Third Party Contractor employees. Authority shall determine whether the Third Party Contractor or Authority employee has successfully passed any training

administered by Contractor. The cost for this training shall not be included in the annual Approved Budget but will be provided under a CTO and will be billed as a Direct Cost.

3.8.1.D. Separation from Service. If any Contractor employee who participates in an approved training program which is either Contractor-provided or Authority-provided and paid for by Authority ceases providing Services for any reason within two (2) years from the date of completion of such training program, Contractor shall notify Authority Contract Manager in writing and shall either reimburse Authority for the cost of such training or provide, within a reasonable period of time and at no expense to Authority, training necessary for a replacement employee.

3.8.1.E. Training Location. Contractor shall make every reasonable effort to provide training programs within the geographic region served by Authority Commuter Rail Operations. Authority will not reimburse Contractor for employee expenses incurred for travel and lodging to attend training out of such region unless Authority has approved the travel in writing in advance. Contractor shall schedule training activities so as not to interfere with its provision of Services.

3.8.1.F. Authority-Provided Training. Authority will only provide training listed in Table 1 of Appendix C, for Egress from Rail Passenger Cars and Defensive Driving.

3.9. SPECIAL SUPPLEMENTARY MAINTENANCE

3.9.1. For the purpose of this Agreement, "Special Supplementary Maintenance" shall mean specialized work performed by Contractor in support of New Capital, R&R and Third Party Recollectable Projects that is incidental to the Ordinary Maintenance but is not either Ordinary Maintenance or Extraordinary Work. Special Supplementary Maintenance activities can include, but are not limited to, work of a specialized nature that requires close coordination with Authority's Train Operations Contractor and require personnel with specialized railroad training or specialized railroad equipment for short periods of time that cannot be performed by a third party. Examples of Special Supplementary Maintenance can include but are not limited to: removal and replacement of existing track to allow an underpass bridge to be constructed, the construction of a shoofly detour track, live track connections at the end of a shoofly track, graffiti removal, flagging for single grade crossing renewal to support a grade crossing safety enhancement project, movement and unloading of rail and other materials within the Limit Lines, transportation and placement of rip-rap for shore protection, and surfacing or stabilizing track for another contract or contractor.

3.9.2. Special Supplementary Maintenance Work shall be performed pursuant to a CTO. Contractor and Authority shall enter into a CTO for each Special

Supplementary Maintenance project before commencing work on that project. Compensation for Special Supplementary Maintenance work shall be based on:

- a. The FBLC for the project that has been agreed upon between Authority and Contractor for that project.
- b. Reimbursement for materials used and equipment rental required in order to perform the Work on that project; and
- c. Such other costs as may be agreed upon by Contractor and Authority for inclusion in the CTO.

3.9.3. The annual budget prepared each year in accordance with Section 5.2. shall include an estimate of Special Supplementary Maintenance to be provided during the Fiscal Year covered by that annual budget. However, because of the unusual and unpredictable nature of the Services required, the amount included in the annual budget shall not be a binding cap on Special Supplementary Maintenance to be performed during that Fiscal Year.

3.9.4. Contractor shall maintain a work force that has sufficient personnel available to provide a volume of Special Supplementary Maintenance that is equal to twenty percent (20%) of the value of the annual budget for Ordinary Maintenance. Contractor shall ensure that its agreement to undertake any Special Supplementary Maintenance does not interfere in any way with its ability to fulfill its obligations to provide Ordinary Maintenance in accordance with all of the requirements of this Agreement.

3.9.5. Execution by Authority of a CTO and delivery of that CTO to Contractor shall constitute authorization by Authority to commence work on a Special Supplementary Maintenance project.

3.9.6. Contractor shall submit invoices for work on Special Supplementary Maintenance in accordance with Section 6.2.2.

3.10. EXTRAORDINARY WORK

Contractor will perform Extraordinary Work as required to maintain and/or restore railroad operations during and/or after accidents or natural disasters. Contractor may begin work without Authority's verbal approval when work is valued up to \$50,000. Contractor may begin work with Authority's verbal approval for Extraordinary Work that exceeds \$50,000 per incident. Authority shall estimate Contractor's annual budgetary amount for Extraordinary Work. Contractor may initiate Extraordinary Work based upon observations made by Contractor's employees or direction from Authority or Train Operations Contractor staff, but will report such actions to Authority staff as quickly as practicable.

3.11. CONTRACT TASK ORDERS

Contractor shall perform Services other than Ordinary Maintenance as specified in CTOs issued by Authority. The Services provided under each CTO are subject to Federal Requirements as defined in Section 41 and race neutral requirements as defined in Section 26. Individual CTOs will be negotiated between Authority and Contractor. Authority shall not be obligated to pay costs in excess of any not-to-exceed price set forth in any CTO. Contractor shall perform all Services required pursuant to any CTO for the not-to-exceed price specified therein.

3.11.1. CTO Proposal Preparation

3.11.1.A. Authority will issue a written request for a CTO proposal to Contractor, to elicit from Contractor a detailed CTO proposal. Authority's request will include, as needed, a description of the Services to be performed, the required schedule, and any special conditions related to the performance of the Services. The effective date of a CTO shall be the date on which Authority executes such CTO. Authority shall not be obligated to pay costs incurred prior to the effective date of any CTO.

3.11.1.B. Contractor's proposal shall be detailed and respond completely to Authority's request. Contractor's proposal shall include, but not be limited to:

3.11.1.B.1 A description of the Services to be performed pursuant to the CTO, in sufficient detail to allow for Authority's evaluation and an independent cost estimate, if required. Such description must include a work plan in sufficient detail for Authority to understand the impact of the proposed work to Authority Commuter Railroad Operations.

3.11.1.B.2 A detailed listing of any information required by the Contractor, from Authority or a third party, in order for Contractor to perform the Services. Contractor must indicate the time at which Contractor requires such information.

3.11.1.B.3 A list of the Subcontractors to be used in performance of the Services. For each Subcontractor, Contractor must identify (1) the specific work to be provided; (2) the personnel, by function and labor title, to be used; (3) the estimated labor hours for each; and (4) whether the Subcontractor is a certified disadvantaged business enterprise.

3.11.1.B.4 A detailed cost breakdown for the proposed Services which includes (1) the FBLC for Contractor and Subcontractor personnel, by labor title, to be used in performance of the CTO; (2) other Direct Costs, which include material and equipment; (3) any other known costs; and (4) a cost/resource loaded schedule to be

submitted in hard copy for CTOs over \$200,000. If requested by Authority, the cost breakdown shall be detailed by milestone or level of work service.

3.11.1.B.5 The negotiated not-to-exceed cost for the CTO will remain in effect for the duration of the CTO.

3.11.1.B.6 To revise an approved CTO, Authority and Contractor shall employ the process set forth above in this Section 3.11.1.

3.11.2. CTO Proposal Review and Approval

3.11.2.A. Upon receipt of Contractor's proposal, Authority will review the proposal. Authority may elect to obtain an independent cost estimate, and may negotiate any terms or costs specific to the CTO.

3.11.2.B. Authority will indicate its acceptance of Contractor's proposal by issuing a CTO. Each CTO will include (1) a numerical designator; (2) a description of the proposed CTO Services; (3) an estimated period of performance, schedule of deliverables, and milestones, if applicable; and (4) the not-to-exceed price for the CTO.

3.11.2.C. Authority's issuance of a CTO shall constitute Authority's notice to proceed. Upon receipt of a signed CTO, Contractor shall start performing CTO Services immediately, or, if applicable, by the Start Date specified in such CTO. If the CTO includes interim milestones, approval may be given for only a portion of the Services. Contractor may not proceed to the next milestone until it receives written approval from Authority.

3.11.2.D. Contractor shall not be entitled to compensation above the amount set forth as the not-to-exceed price of any CTO unless the Authority has approved a revised price and the parties have executed a written revision of such CTO.

3.12. WORK WEEK

3.12.1. The normal work week for each Contractor employee will consist of four ten-hour days that may be any days of the week as determined by Authority's operational requirements, based on considerations of safety and accessibility during Authority's non-peak hours of operation. Notwithstanding the preceding sentence, the Authority reserves the right, upon the provision of two weeks' notice to Contractor, to require some or all of the Contractor's or Subcontractor's employees to work five eight-hour days as the needs of the Authority change during the term of this Agreement.

3.12.2. Typically, a large portion of the Ordinary Maintenance shall be scheduled to occur on weekends and at night when train traffic is significantly reduced and there are more opportunities for track possession. Authority reserves the right to modify this schedule with two-week notice to Contractor.

4. OBLIGATIONS OF AUTHORITY

4.1. ACCESS TO EQUIPMENT AND PROPERTY

Authority shall provide Contractor access to the Service Property as necessary for Contractor's performance of the Services. Authority shall make Authority property available for use by Contractor for (1) parking and assembly areas for maintenance forces and (2) storage space for vehicles, equipment, tools, and supplies. Authority shall pay for all utilities in all facilities and storage space provided pursuant to this Agreement. Since Authority requires Contractor's proximity to the Service Property, Authority shall provide space to Contractor on the Service Property for Contractor to place portable office units. Contractor shall be responsible for the cost of the lease of any portable office units. If Contractor desires to locate its offices at a different site, Authority approval of leased office space will be contingent upon Authority's approval of Contractor's proximity to work assignments and logistics relating to the transportation of Contractor's personnel to work sites. Any lease or utility payments for such leased office or storage space shall be included in the FBLC and not billed as a Direct Cost.

4.2. IDENTIFICATION OF VEHICLES

Authority shall mark and identify all Authority vehicles and other equipment provided for Contractor's use in providing the Services with Authority's "METROLINK"® colors, logo and other identification marks as determined by Authority.

4.3. AUTHORITY ACCESS

Authority and/or its designees shall have access at all times to the Service Property.

4.4. CHANGES IN ENGINEERING INSTRUCTIONS AND STANDARDS AND AUTHORITY EQUIPMENT

Authority may make specific improvements or additions to, or may change entirely the Engineering Instructions and Standards or related practices, or assigned equipment. Contractor shall make every reasonable effort to fulfill its obligations under this Agreement using such equipment and in accordance with such revised Standards as soon as possible.

4.5. AUTHORITY OF THE CONTRACTING OFFICER AND AUTHORITY CONTRACT MANAGER FOR MAINTENANCE AND MANAGEMENT SUPERVISION

In addition to the rights and obligations set forth elsewhere in this Agreement, Authority shall have, with respect to Contractor's performance, the right to:

4.5.1. Monitor any records, facilities, or equipment developed or used, and monitor the personnel and Subcontractors used, by Contractor in performance of its obligations pursuant to this Agreement. Contractor shall provide Authority with a summary of monthly reports documenting any audits of employee performance, including efficiency tests and any disciplinary action related to safety performed by Contractor.

4.5.2. Inspect any equipment utilized on the Service Property at any time, and remove from service any equipment, which, in Authority's opinion, is in an unacceptable condition.

4.5.3. Finally determine all matters relating to or affecting the Services. Except as expressly specified in this Agreement, the Contracting Officer may exercise any powers, rights or privileges that have been lawfully delegated by Authority to the Contracting Officer. Nothing in this Agreement may be construed to bind Authority for the acts of its officers, employees or agents that exceed the authority of such persons as specified herein.

4.5.4. The Contracting Officer has delegated to Authority's Assistant Director of Maintenance and Rehabilitation certain powers and duties in connection with this Agreement. The Assistant Director of Maintenance and Rehabilitation is the authorized representative of the Contracting Officer for matters related to this Agreement. The Assistant Director of Maintenance and Rehabilitation or his or her designee the Authority Contract Manager are empowered to:

4.5.4.A. Have general oversight of the Services and this Agreement, including the power to monitor and enforce Contractor's compliance with this Agreement.

4.5.4.B. Remove any portion of the Services from Contractor's scope of work if Contractor fails to perform such Services to Authority's satisfaction.

4.5.4.C. Subject to further review and acceptance by Authority, negotiate with Contractor all adjustments pertaining to CTOs for Special Supplementary Maintenance and Extraordinary Work.

4.5.4.D. Accept and/or prepare payment applications for Services performed by Contractor.

4.5.4.E. Inspect and closely monitor Contractor's performance and test Contractor's work.

4.5.4.F. Enforce the requirements of Authority's SSPP, Engineering Instructions and Standards, Authority's practices, GCOR and monitor safety requirements as set forth in this Agreement or required by law.

4.5.4.G. Monitor Contractor's Safety Programs, Policies, Practices and Training to ensure Contractor is enforcing Contractor's requirements.

4.5.5. Neither the Assistant Director of Maintenance and Rehabilitation nor Authority Contract Manager shall have control or charge of or be responsible for (1) Contractor's means, methods, sequences or procedures; (2) Contractor's training and safety precautions and programs in connection with Contractor's performance of the Services; or (3) any act or omission of Contractor, any Subcontractor or any other person performing any of the Services.

4.5.6. In addition to the foregoing, the Assistant Director of Maintenance and Rehabilitation and Authority Contract Manager shall have such rights and powers as are expressly set forth elsewhere in this Agreement.

4.6. RAILROAD RADIO EQUIPMENT

4.6.1. Contractor shall purchase, upon approval by Authority, portable (handheld) and mobile (vehicle mounted) radios equipped for use on Authority's assigned AAR channels and shall maintain and adjust such radios using personnel from Authority's other maintenance contracts. Authority will maintain an inventory listing the names of any individuals to whom Contractor assigns such radios. Contractor must notify Authority of and will be responsible for the cost of any loss, damage and exchange of any such radios. Contractor shall cooperate with radio maintenance requirements including making personnel and equipment available to support maintenance of radios and shall take reasonable precautions to protect radios against loss or damage. Contractor shall utilize such radios in compliance with the GCOR. Upon expiration of this Agreement, Contractor shall return all Authority radios in original operating condition, less reasonable wear and tear. Radios purchased by Contractor shall be reimbursed by Authority as a Direct Cost.

4.6.2. As Authority deems necessary, Authority shall furnish Contractor with Digicon EAX devices, Digicon laptops or other electronic devices.

4.7. ENGINEERING STANDARDS, INSTRUCTIONS AND PRACTICES

Authority Engineering Instructions and Standards and Authority's specific design parameters, current as of the Effective Date of this Agreement, for use by

Contractor in performing the Services are attached hereto at Appendix I and Appendix L.

4.8. TOOLS AND PERSONAL PROTECTIVE EQUIPMENT

4.8.1. Authority shall furnish tools and equipment, which may be new or used, for the use of Contractor upon the initiation of Services. Contractor shall maintain Authority's tools in good condition during the term of this Agreement and shall return such tools to Authority upon the termination of this Agreement. Representatives of Authority and Contractor shall conduct inventories upon the initial delivery of tools to Contractor and upon the return of tools to Authority. The maintenance of Authority's tools, including replacement for loss, breakage or consumption, is the responsibility of Contractor and the cost for such maintenance is to be included in the FBLC rates charged for the Services. Replacement tools must meet the standards set forth in detail at Appendix V.

4.8.2. Furnishing personal protective equipment is the sole responsibility of Contractor and is included in the FBLC. All Contractor and Subcontractor employees shall be required to wear personal protective equipment conforming to the requirements of FRA Section 214 including (1) head protection, Section 214.113; (2) foot protection, Section 214.115; (3) eye and face protection, Section 214.117; and (4) fluorescent orange vests with reflective striping and Contractor's name on the vest.

4.9. AUTHORITY EQUIPMENT

The Authority shall furnish equipment listed at Appendix E for use by Contractor in providing the Services.

5. ANNUAL BUDGET

5.1. PREPARATION OF PROPOSED SERVICE PLAN

During the term of this Agreement and prior to January 1 of each year, Authority shall prepare and submit to Contractor a Service Plan covering the next Fiscal Year. This Service Plan shall include a detailed description of the Services Authority expects Contractor to provide during the next Fiscal Year. These Services will form the basis for the Approved Budget and the Service Plan.

5.2. PREPARATION OF PROPOSED BUDGET

5.2.1. During the term of this Agreement and no later than January 20 of each year, or twenty (20) days after delivery of the Service Plan by Authority, Contractor shall prepare and submit to Authority a proposed budget, in a format to be determined by Authority, for provision of Services described in the Service Plan for

the next Fiscal Year. The proposed budget shall reflect actual operations and levels of Services being provided during the then-current Fiscal Year, except as modified for the coming Fiscal Year. The proposed budget shall:

- a. Be consistent with the Service Plan and requirements set forth at Appendix S
- b. Be based upon the FBLC rates proposed for years one through six, and appropriately inflated rates for subsequent years seven through ten
- c. Be based upon mutually agreed-upon quantities of material purchases and subcontracted services
- d. List all positions whose time will be chargeable during the coming Fiscal Year
- e. Include a mutually developed of expenditures relating to rental of Contractor-owned vehicles and equipment projected for the Fiscal Year
- f. Specify the assumptions used in developing the proposed budget
- g. Include Contractor's safety plan and associated costs
- h. Include the annual training plan and associated costs
- i. Include the annual plan for maintenance and support of both Authority and Contractor-owned equipment and vehicles
- j. Include the annual herbicide application program
- k. Include the annual rail flaw/defect detection and track geometry measurement programs
- l. Include a billing schedule for the applicable Fiscal Year

5.2.2. The proposed budget shall include the costs Contractor may incur in performing Ordinary Maintenance and Special Supplementary Maintenance. Contractor shall maintain the resources and capacity to perform Special Supplementary Maintenance, which is estimated at twenty percent of the Ordinary Maintenance budget. Authority shall develop and include estimates for Special Supplementary Maintenance in the Approved Budget. Expenditures for Special Supplementary Maintenance shall be authorized through the CTO process.

5.3. AUTHORITY REVIEW OF PROPOSED BUDGET

No later than February 20 or thirty (30) calendar days after Contractor submits its budget for each year, whichever is later, Authority shall present to Contractor its comments on the proposed budget, the Service Plan, and all other proposals Contractor has provided, which will specify the item(s), if any, to which Authority objects, and the basis for each objection. Authority and Contractor shall

promptly enter into negotiations to resolve any objectionable items. The parties will complete the negotiations and resolve any outstanding issues by no later than April 1 of each year.

5.4. APPROVED BUDGET

The final Approved Budget shall include (1) an agreed-upon Ordinary Maintenance budget; (2) amounts for (a) Direct Costs for materials and subcontracted services, (b) rental of Contractor owned equipment and vehicles, (c) Contractor's annual safety and training programs; and (3) contract authority for (w) Special Supplementary Work, (x) Extraordinary Work, (y) Recollectable Work and (z) support for R&R and New Capital.

5.5. ADJUSTMENT OF FBLC AND EQUIPMENT RATES

For the option years beyond the initial 6-year Agreement period, the FLBC and equipment rates incorporated into this Agreement as set forth on Appendix S, shall be adjusted annually effective at the beginning of the Fiscal Year based on the relationship of the then most recent Consumer Price Index (CPI) for the Los Angeles, Anaheim and Riverside areas issued each January 1st. This index will be compared to the CPI index published on January 1st of the prior year. This comparison will indicate the changes in material prices, wage rates and supplements combined, excluding fuel to be used in adjusting the approved FBLC and equipment rates. If the change in the CPI Index from one year to another is negative or zero then no annual adjustment shall occur. Adjustments will be made to the Direct Labor rate portion of the FBLC rates only.

5.6. BUDGET PLAN FOR FIRST YEAR OF AGREEMENT

For the portion of the Fiscal Year remaining after the Effective Date of this Agreement, Contractor's budget plan will be based on one twelfth of Contractor's first year rates as proposed, times the remaining months in that Fiscal Year as amended prior to start of Services. Beginning with Fiscal Year 2009/10, Contractor and Authority shall establish the budget amount for the next full Fiscal Year using the procedure described in Sections 5.1. through 5.5, above.

5.7. BUDGET AMENDMENT FOR UNFORESEEN EVENTS

Upon the occurrence of events that were not reasonably foreseeable at the time of approval of the Approved Budget, and which will cause a material change in the assumptions used in developing the Approved Budget, the parties shall agree upon amendments to the Approved Budget for that Fiscal Year to reflect those changes.

5.8. BUDGET REVISIONS FOR COST OVERRUNS

If Service costs are projected to exceed the Approved Budget in effect at the time Contractor performs such Services, such overruns must be justified and

addressed appropriately prior to incurring any costs in excess of the Approved Budget. Contractor's failure to obtain Authority's approval of any costs in excess of the Approved Budget may result in Authority's rejection of such costs.

6. PAYMENT AND INVOICING

6.1. COMPENSATION

6.1.1. Authority's maximum annual payment obligation under this Agreement shall be the amount stated in the annual Approved Budget based on the rates established in Contractor's pricing schedules for the FBLC and Direct Costs, using actual and fixed unit rates, as set forth in detail at Appendix S, attached hereto.

6.1.2. Contract authorization will be established by Authority as part of the Fiscal Year annual budget approval process. Funding for succeeding Fiscal Years will be established in accordance with Article 5 of this Agreement.

6.2. INVOICING

Contractor shall invoice Authority using the rates established in Contractor's pricing schedules, attached at Appendix S and incorporated in the Approved Budget. Contractor will prepare all invoices in accordance with the billing schedule provided with the Approved Budget, shall consistently provide for a monthly or a four or five-week billing cycle and shall submit all invoices no later than 25 (twenty-five) working days after the end of the billing cycle. On or before the end of April of each year, Contractor shall submit an estimate of the forecasted total Fiscal Year costs through the end of the current Fiscal Year. The estimate shall be prepared in invoice format with appropriate cost breakdown in accordance with the requirements set forth at Appendix M. The last invoice submitted for the Fiscal Year will be billed up to and including June 30 of that Fiscal Year. Contractor shall furnish information as may be requested by Authority to substantiate the validity of an invoice. Payment shall be based on monthly invoices that document expenses for each charge using the cost breakdown as required in Appendix M and sorted by project number and Territory Codes as follows:

6.2.1. Ordinary Track and Structures Maintenance

6.2.1.A. Labor

6.2.1.A.1 Authority shall compensate Contractor for labor for Services performed under this Agreement using the FBLC set forth at Appendix S.

6.2.1.A.2 The FBLC rate will be broken down as follows, and will include:

6.2.1.A.3 Direct Labor Costs:

- a. **Direct Labor:** Actual salary paid to Exempt Employees and actual hourly rates paid to Covered Employees at the approved amounts appearing at Appendix S. Exempt Employees will be billed at the employee's salary, provided that the salary billed for each employee shall not exceed the amount stated at Appendix S.
- b. **Employee Fringe Benefits:** FBLC shall include costs for insurance, vacation, holiday, other paid absences, disability, sickness, health, welfare and dental coverage, life insurance and travel insurance and worker's compensation, employee savings, and investment plans, pension costs accrued and other employee benefits paid by Contractor.

6.2.1.A.4 **G&A Overhead:** In addition to the costs listed at Appendix T, (1) personal protective equipment program costs; (2) administrative and managerial costs; (3) two-way digital radios and mobile telephone costs; (4) allowance for (a) office supplies, (b) safety equipment, (c) licenses, (d) fees for business licenses, (e) vehicle registration and office utility charges, (f) taxes, (g) Consumable Supplies, (h) wear and replacement of tools provided by Authority under Section 4.8, and (i) permits for meter hook-ups are also included as part of G&A Overhead and incorporated in the FBLC rates.

6.2.1.A.5 **Profit:** Profit is calculated as a percentage of Direct Labor Costs and is included in the FBLC rates.

6.2.1.A.6 **Material Procurement Overhead:** Contractor will allocate a percentage of its overhead rate for material procurement purposes in accordance with FTA Circular 4220.1E.

6.2.1.B. Direct Costs. Contractor shall bill the following items to Authority as Direct Costs, shall itemize such items on each invoice and must also include documentation for material purchases (quotes and/or sole source justifications must be included as part of the invoice). No markups will be allowed on any Direct Costs.

6.2.1.B.1 Equipment.

- a. Contractor-owned equipment assigned for use to perform Services under this Agreement shall be billed for the billing period at the rates included in Contractor's pricing schedules shown on Appendix S hereto. The costs invoiced will be at the lowest total combination of hours, days, weeks, or months for the total billing period that the equipment is provided. For purposes of determining the cost of the total hours of equipment rented during the billing period, Contractor will invoice as follows:
 - i. The hourly rate is set at 15% of the Daily rate.
 - ii. The Daily rate is set at 25% of the weekly rate.
 - iii. The weekly rate is set at 28% of the Monthly rate.

(1) Authority will provide or reimburse Contractor for fuel usage for the Heavy Duty Trucks and Equipment with Services as listed in Appendix S hereto. Fueling will be reimbursed at the actual cost of fuel and applicable mileage used.

(2) Payment will be deducted from the billing period at a daily rate for any day that the equipment is not able to operate due to breakdowns exceeding one hour. Costs invoiced will not include the labor for a driver or machine operator. Personnel to operate equipment shall be invoiced at the FBLC for the category of employee assigned to the work. For additional Contractor-owned equipment provided that is not listed at Appendix E, Contractor shall be reimbursed for the use of such equipment through rental rates as established in the rental rate listed in the *Blue Book for Construction Equipment* for the current year. The maximum hourly rate shall not exceed the applicable *Blue Book* monthly rate divided by 176. In the event Contractor rents equipment from

an equipment rental company, Contractor will be reimbursed as a direct cost upon receipt of invoices from the rental company. Fueling, if not included as part of the rental cost, will be reimbursed at the actual cost of fuel and applicable mileage used.

- b. The Authority will allow the Contractor up to 90 days to provide the requested Equipment. The equipment quoted rates shall be based on a usage of 12 Months. The Authority and Contractor, if required, will meet and agree on a rate adjustment for equipment not used or required for a period of less than 12 months. All equipment shall initially be less than 2 years old unless otherwise agreed to by Authority. Service will include all normal lubricants and parts required to maintain equipment in operational condition.
- c. Costs to repair and maintain Authority-owned equipment shall be based on Blue Book methodology where appropriate and shall include all material, parts, supplies, specialty subcontracted maintenance services (i.e., rebuilt hydraulic components, transmission repairs, body shops, and locksmiths) as well as costs of damage repairs or warranty work. Contractor must specifically identify and document these costs and must obtain prior written approval from Authority prior to incurring any such costs. Costs to repair any damage caused by Contractor are not reimbursable.
- d. Costs for Contractor-furnished equipment for Special Supplementary Maintenance performed under a CTO shall be summarized in the invoice detail for that CTO and incorporated with the invoice submitted for services performed for the Basic Track and Structures Maintenance Services. Authority will establish a rental rate for Authority-owned equipment.

6.2.1.B.2 Tools, Supplies, and Materials

- a. Contractor shall invoice Authority for tools that Authority previously authorized. The maintenance and repair of tools provided by Authority under Section 4.8 due to normal use, breakage, or loss is the responsibility of Contractor and is not billable as a Direct Cost under this Agreement.

- b. Directly billable materials include, but are not limited to (1) replacement components for Track and Structures; (2) roadway signs; (3) herbicides; (4) cutting and grinding wheels and blades; (5) drill bits; (6) welding rod and gas; (7) flange lubricators; (8) thermite welding kits; (9) parts and supplies applied to Authority equipment; (10) signs and flags; (11) right of way security devices such as cables, gates, and locks; (12) cleaning materials including, but not limited to solvents, rags and absorbents; (13) hazmat supplies; (14) concrete, pavement, and paint; (15) tool boxes for Authority vehicles; (16) portable toilets; (17) film and the developing of film, or cost of prints if digital cameras are used; (18) freight for material delivered; (19) batteries and fire extinguisher refills; (20) rock products; (21) paving cement cleaning products or solvents; and (22) dumpsite products rental and disposal.
- c. Non-billable costs for materials are costs for all other tools, personal protective equipment, office supplies, dust masks, disposable coveralls, fire extinguishers, garden hoses, paint brushes, drinking water and cups, fees, markups or other additives to material costs. The cost for these items shall be included in the FBLC.
- d. Costs for material provided for Special Supplementary Maintenance or Extraordinary Work are to be billed with each applicable CTO.
- e. Consumable Supplies. Cost of materials applied to the property (i.e., paint, rock products, paving, cement cleaning products, lubricants or solvents) will be reimbursed at cost.

6.2.1.B.3 Fees. Fees for which Contractor may bill Authority as a Direct Cost include (1) water meter fees to provide water for maintenance or vegetation spraying; (2) dump fees to dispose of waste material; (3) heavy or wide load permits and street closure permits; (4) temporary utility connections; (5) dump fees for disposal of waste materials; and (6) inspection fees for Authority vehicles. No overhead, mark-up or other additive shall be charged in these costs. Non-billable fees include costs that are covered by the FBLC rate including but not limited to business licenses, vehicle license fees, computer or software use fees, and fees paid for administrative functions including office utility charges.

6.2.1.B.4 Subcontracted Services.

- a. Subcontracted service costs that have been previously authorized in writing by Authority must be substantiated with copies of receipts and invoices from suppliers, vendors and Subcontractors. These costs include, but are not limited to (1) services for locksmiths; (2) electrical or plumbing repair; (3) tree trimming; (4) glazing; (5) permit fees; (6) transportation of Authority equipment; (7) contracted repairs to Authority equipment or property; and (8) safety services (i.e., training program development, training materials, testing, or reports). Contractor will add no fee, mark-up or other additive to these costs.
- b. Contractor shall summarize costs for subcontracted services performed under a CTO in the invoice detail for that CTO and shall incorporate such costs with the invoice submitted for services performed for the Basic Track and Structures Maintenance Services.

6.2.1.B.5 Geometry car testing (Holland TrackStar or equivalent).

- a. Contractor will be compensated at the fixed unit rates included in Contractor's pricing schedules shown at Appendix S as also incorporated in the Approved Budget for the following:
 - 1) Geometry car test. Contractor will be compensated for work performed per mile. This price includes the cost for personnel performing the detection service, the equipment, the costs of furnishing individual and annual summary reports, and all other costs incurred in providing this service not identified below.
 - 2) Geometry car Mobilization. Contractor will be compensated for mobilization for each test on Authority property as shown at Appendix S. There is no mobilization payment for movement between the various lines operated by Authority, nor for interruptions in testing not exceeding five days.

- 3) Waiting time. Contractor will be compensated for any time in excess of 30 minutes that the rail test crew and equipment is available for work under the schedule and is unable to perform testing due to train operation or other reason that prevents access to the main track.
- b. The following subcontracted geometry car detection costs are not billable:
 - 1) Pilot. The unit price for geometry car test detection does not include the cost of a flagger, rail repair leader, or track supervisor that will be assigned to obtain track authority for operation of the rail flaw/defect detection equipment. The cost for the pilot will be billed at the FBLC rate for personnel.

6.2.1.B.6 Vegetation Control

- a. Herbicide application will be billed at the unit price rate included in Contractor's pricing schedule set forth at Appendix S, as incorporated in the Approved Budget. This rate will be based on the bid application price per acre that will include the cost of equipment, water, labor, supervision, profit, overhead, and incidentals to apply the herbicides on the railroad right of way.
- b. Contractor may charge the FBLC rate for the use of one territory Qualified person, who will be responsible for piloting the spray equipment during herbicide application.
- c. The cost of herbicide shall be billed at actual cost or the amount approved in the Annual Budget, whichever is less. The prices for herbicide application shall be based upon the number of acres treated. Acreage will be computed by measurement of amount of water applied through calibrated meters. Calibration will be verified at the beginning of each work plan cycle. If acreage metered does not match within 5% the acreage computed from Limit Lines times distance, the spray system will be recalibrated or payment shall be made by area computation, at Authority's sole option.

6.2.1.B.7 Training Costs. Contractor shall establish and provide training and re-qualification programs for all employees who perform the Services. The FBLC, the training materials, and approved travel for such training are reimbursable and billable as Direct Costs and shall include:

- a. The cost of the straight time FLBC and expenses of Contractor and Subcontractor attendees when attending Contractor-provided training identified at Appendix C.
- b. The cost of the straight time FBLC and expenses of Contractor and Subcontractor attendees, when training is part of an Authority-approved training program, or the training is required specifically for the provision of Authority Services and is held in Authority's service area.
- c. The cost of course development by Contractor personnel of programs included in the list appearing at Appendix C or of new programs not included at Appendix C, specifically when either program is requested by Authority, if Authority has approved the course structure and content in advance.
- d. The cost of course development, training, facilities and other associated costs that are paid to third parties and are required specifically for training for providing the Services, if Authority has approved the course structure and content in advance.

6.2.1.B.8 Relocation Cost. Relocation costs billable as Direct Costs shall include, on a one-time basis under this Agreement, all relocation costs for the MCM and for personnel reporting directly to the MCM who are moved to the area served by the Authority Commuter Railroad Operations to provide Services pursuant to this Agreement, if Authority has approved, in advance, both the employee and the relocation for this purpose. All relocation costs reimbursable by Authority shall be incurred and shall be reimbursed in amounts that are consistent with Contractor's relocation policy as previously authorized by Authority in the Contractor's Mobilization Plan. The relocation cost will be made in thirty-six (36) equal monthly payments beginning the month after any employee begins work on the Service property.

6.2.2. Special Supplementary Maintenance

Cost for Special Supplementary Maintenance work shall be billed in accordance with the individual CTO covering such Services, and using the same invoicing requirements as are stated in Sections 6.1 and 6.2, above.

6.2.3. Extraordinary Work

Costs for Extraordinary Work shall be billed in accordance with the individual CTO covering such Services, and using the same invoicing requirements as are stated in Sections 6.1 and 6.2, above.

6.2.4. Performance Incentive Payments for Contractor and Key Subcontractors

6.2.4.A. Beginning in the second year of this Agreement, Contractor's employees and managers shall have the right to earn incentives of three percent (3%) of Contractor's previous year's actual expenditures for Ordinary Maintenance and CTO work less G&A Overhead, Profit and the deductions set forth at Section 6.2.4.B. below.

6.2.4.B. The annual incentive payment available to employees shall be reduced proportionately to an amount of equal to one-half (1/2) of total Liquidated Damages that are assessed Contractor during the previous Fiscal Year pursuant to this Agreement.

6.2.4.C. Distribution of incentive payments will be made to Contractor's and key Subcontractor's Covered Employees and Exempt Employees at the completion of the second full twelve-month period of performance of this Agreement and will be based on improvement as documented during that same twelve-month performance period; provided, however, that such incentive payments will be made only if the Authority has confirmed (which confirmation shall not unreasonably be withheld) that the quality of Services provided by Contractor justifies payment of such incentives. The incentive fund pool is to be distributed at an equal rate of distribution to each employee; provided however, that each Exempt Employee shall receive a share that is equal to 300% more than any one employee such Exempt Employee supervises.

6.2.4.D. Authority shall provide Contractor and Subcontractor with notice of intent to reduce the pool of funds available for making employee incentive payments pursuant to this Section no later than thirty (30) days after the end of the Fiscal Year in which the events on which the assessment is based occurred. In the event of a disagreement between Contractor and Authority as to the cause or

responsibility of an action or inaction that results in Liquidated Damages or reduction in payment as specified by this Section, Authority Contract Manager shall make a final determination upon an objective investigation of any such matter. Such determination shall not be subject to the dispute resolution provisions of this Agreement or otherwise.

6.2.4.E. The incentive payment for Contractor's employees and managers shall be based on an IIP developed by Contractor's and Key Subcontractors' Managers and Exempt Employees in consultation with and subject to the approval of Authority. The agreed-upon IIP shall be issued approximately 5 months prior to Authority's approval of the Annual Budget beginning in the second Fiscal Year and occurring each successive year thereafter so that the incentive amount can be included in the upcoming year's annual budget. The IIP will be based on four measurable performance categories that encourage or promote sustainable best industry practice improvements. Such categories for each IIP will be determined between Authority and Contractor, and shall include but not be limited to (1) safety; (2) inspection; (3) attendance; (4) training; (5) containment of overtime; (6) productivity; (7) life cycle extensions of track assets; (8) workmanship and quality; (9) reductions in train delays caused by track; (10) incorporation of new technologies and processes; (11) outside and third party contractor support; (12) ride quality improvements; (13) reductions in FRA reportable defects and violations; (14) inventory management; (15) reductions in property damage; (16) adherence to rules or instructions; and (17) such other performance factors that may be expected to contribute to the successful delivery of the Services. A basis for measuring improvement under any IIP category will be mutually agreed upon by Authority and Contractor. A minimum score of eighty-five percent will be established to represent successful performance within any IIP category. Contractor and key Subcontractors will provide Authority with an annual report certifying the amount paid to each employee in connection with that Fiscal Year's IIP.

6.2.4.F. When the Authority has confirmed that the quality of Services provided justifies payment of incentives, Performance Incentive Payments will be paid to Contractor, a Subcontractor and their respective employees when Contractor or Subcontractor achieves a predetermined minimum improvement in each of the four categories determined in accordance with Section 6.2.4.E above. If Contractor or Subcontractor only achieves a five percent (5%) improvement to three out of the four categories, such Contractor or Subcontractor will receive seventy five percent (75%) as a performance incentive payment. Fifty percent (50%) of apportioned

IIP funds will be paid if Contractor or Subcontractor achieves only two out of the four categories. Twenty-five percent (25%) of apportioned IIP funds will be paid if Contractor or Subcontractor achieves one out of the four categories. No Performance Incentive Payments will be made if Contractor or Subcontractor does not achieve any improvements.

6.3. COMPARISON STATEMENT AND COST BREAKDOWNS

In accordance with the agreed-upon billing schedule, Contractor shall provide Authority with a statement, included as a part of Contractor's monthly invoice, showing a comparison of Contractor's performance during that month to the Approved Budget amount for that month and for the Fiscal Year to date. Contractor shall break out such performance statement by territory project number and Service category in accordance with the standards set forth at Appendix M. Contractor must provide with its invoice a summary report broken down by job category, employee name and project number, indicating straight time, overtime and double time hours worked at the appropriate FBLC rates for the billing period.

6.4. DELAYED INVOICES

If Contractor's complete invoice, including budget analysis and reports as specified in Appendixes M and Q, is not submitted within twenty-five (25) working days from the close of the invoice period, Authority shall have the right to take a one-time deduction of \$600.00 for such late invoice.

6.5. INVOICE SUBMITTAL

6.5.1. Contractor shall submit both hard copies and electronic copies of all invoices as follows:

Original copy to Authority Contract Manager for review and approval prior to processing for payment to:

Southern California Regional Rail Authority
2701 N. Garey Avenue
Pomona, CA. 91767
Attn: Authority Contract Manager

One copy to:

Southern California Regional Rail Authority
700 S. Flower Street, 26th Floor
Los Angeles, CA 90017
Attn: Accounts Payable

6.5.2. Each invoice shall include the following information:

6.5.2.A. Agreement number

6.5.2.B. Time period covered by invoice

6.5.2.C. Amount of payment requested

6.5.2.D. Information requested by Authority as set forth at Appendix M, identifying the territory project for Ordinary Maintenance and the CTO number and project number for any Special Supplementary Maintenance, supported by all relevant documentation to include cost quotes for material procured, if applicable.

6.5.2.E. Monthly cost status reports including:

6.5.2.E.1 Labor – Contractor must provide a summary of hours for each Exempt Employee and Covered Employee in the current invoice period, reported by job category, employee name, and project number, indicating straight time, overtime and double-time hours worked at the approved FBLC rates for the relevant Fiscal Year.

6.5.2.E.2 Non-Labor – Contractor must provide a summary of non-labor costs incurred by expense type in the current invoice month and Fiscal Year to date. Non-labor costs must be substantiated with copies of receipts and invoices from suppliers, vendors and Subcontractors. The receipts and invoices must contain sufficient detail to allow Contractor and Authority to assess the validity of the costs billed by Contractor.

6.5.2.E.3 Summary of G&A Overhead and Profit earned at the approved rates, offset by reductions in the Liquidated Damages incurred for the current month and Fiscal Year to date.

6.5.2.F. Certified payrolls

6.5.2.G. An electronic copy of the invoice in the format required by Authority.

6.5.3. Invoices are subject to review by Authority's Contract Manager for accuracy and adequacy of required backup information prior to submittal to Authority's Accounts Payable for payment. Authority may, at its option, deduct any disputed amounts from its payment of any invoice. Once Authority and Contractor resolve any such dispute as to the amounts due and payable, Contractor will submit a separate supplemental invoice to request payment for such amounts. After Authority Contract Manager reviews and accepts any invoice, the approved invoice will then be submitted to Authority's Accounts Payable for payment. Authority shall

remit payment to Contractor within thirty (30) calendar days from the date the invoice is approved by Authority Contract Manager.

6.6. RESPONSE TO REQUEST FOR ASSURANCES

Authority may at its sole discretion and at any time during the term of this Agreement request Contractor to provide Authority with evidence of Contractor's continuing financial ability to undertake and fulfill its obligations under this Agreement. Authority may submit such information to an independent outside certified public accountant for a determination as to Contractor's financial ability to undertake and fulfill its obligations in this Agreement. Areas to be examined may include, but are not limited to internal liquidity, operating efficiency, operating profitability and financial risk. A determination by such certified public accountant that Contractor does not have the requisite financial ability to perform its duties pursuant to this Agreement may, at the sole discretion of Authority, constitute a material breach of this Agreement, entitling Authority to terminate this Agreement as provided hereunder.

7. TERM OF AGREEMENT

The term of this Agreement shall be for six years from January 1, 2009 to December 31, 2014 with one four-year option to extend that Authority may exercise in its sole discretion.

8. TERMINATION FOR CONVENIENCE

Authority may terminate this Agreement for Authority's convenience at any time by giving Contractor a minimum of thirty (30) calendar days' written notice of Authority's election to terminate. Upon receipt of such notice, Contractor shall immediately take action not to incur any additional obligation, cost or expense, except as may be reasonably necessary to terminate its activities. Authority shall pay Contractor its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by Contractor to effect such termination. Thereafter, Contractor shall not be entitled to make any claim against Authority in connection with this Agreement. All finished or unfinished documents and any materials procured for or produced pursuant to this Agreement shall become the property of Authority upon the effective date of such termination for convenience.

9. TERMINATION FOR BREACH OF AGREEMENT

9.1. If Contractor fails to perform any of the provisions of this Agreement or fails to make progress so as to endanger timely performance of this Agreement,

and does not cure such failure within thirty (30) days after receipt of written notification that such failure has occurred, Authority may give Contractor written notice that Contractor is in Default. If Contractor does not cure such Default or provide a plan to cure such Default which is acceptable to Authority within the time specified by Authority, then Authority may terminate this Agreement on the basis of Contractor's breach of this Agreement

- 9.2.** If a federal or state proceeding for relief of debtors is undertaken by or against Contractor, or if Contractor makes an assignment for the benefit of creditors, then Authority may immediately terminate this Agreement.
- 9.3.** If Contractor violates Article 31, Compliance with Lobbying Policies, then Authority may immediately terminate this Agreement.
- 9.4.** In the event Authority terminates this Agreement as provided in this Section, Authority may procure, upon such terms and in such manner as Authority may deem appropriate, Services similar in scope and level of effort to those so terminated, and Contractor shall be liable to Authority for all of Authority's costs and damages, including, but not limited to, any excess costs for such Services that are in excess of the amount Authority would have paid for such Services under this Agreement.
- 9.5.** All finished or unfinished documents and any materials procured for or produced pursuant to this Agreement shall become the property of Authority upon the effective date of such termination for default.
- 9.6.** If, after notice of termination of this Agreement under the provisions of this Section, it is determined for any reason that Contractor was not in Default under the provisions of this Section, or that the Default was excusable under the terms of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 8, Termination for Convenience.
- 9.7.** The rights and remedies of Authority provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

10. NOTIFICATION

All notices hereunder concerning this Agreement and the Services to be performed shall be physically transmitted by courier, overnight, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

To Authority:

Southern California Regional Rail Authority
700 South Flower Street, 26th Floor
Los Angeles, CA 90017-4101
Attn: Track, Structures and Right-of-Way Contract Administrator

With a copy to Authority's Contract Manager

To Contractor:

**VEOLIA TRANSPORTATION MAINTENANCE
AND INFRASTRUCTURE, INC (VTMI)**
24775 SAN PEDRO AVENUE
LAGUNA HILLS, CA 92653

Attn: Paul Marshall

11. AUTHORITY AND CONTRACTOR'S REPRESENTATIVES

11.1. AUTHORITY'S CONTRACT MANAGER

Authority's Contract Manager under this Agreement shall be the Manager of Track, Structures and Right-of-Way Maintenance.

11.2. CONTRACTOR'S KEY STAFF

The following are Contractor's Key Staff:

<u>Name</u>	<u>Role</u>
Paul Marshall	Maintenance Contract Manager
Shane Edwards	Asst. Maintenance Contract Manager
David Tan	Material Management Supervisor
Dean Stuart	Railroad Bridge Supervisor
Thomas Kiepe	Project Engineer
Roberto Becerra	Training Manager
Andrew Burroughs	Office Engineer
Brian Sims	Safety Manager
Riyad AbouJaoudeh	Project Engineer

11.2.1. Authority awarded this Agreement to Contractor based on Authority's confidence and reliance on the expertise of Contractor's Key Staff identified above. Contractor shall not reassign any Key Staff or assign other personnel to Key Staff roles until Authority approves a replacement in writing in accordance with Section 3.7.1.B of this Agreement.

12. ASSIGNMENT

This Agreement, any interest herein or claim hereunder, may not be assigned by Contractor either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by Contractor, without the prior written consent of Authority, which consent Authority may grant or withhold in the exercise of its sole discretion. Consent by Authority shall not be deemed to relieve Contractor of its obligations to comply fully with all terms and conditions of this Agreement.

13. SUBCONTRACTING

Authority hereby consents to Contractor's subcontracting portions of the Services to the parties identified below for the functions described in Contractor's proposal. Contractor shall include in each subcontract agreement the stipulation that Contractor, not Authority, is solely responsible for payment to the Subcontractor for the amounts owing and that the Subcontractor shall have no claim, and shall take no action against Authority, Member Agencies or officers, directors, employees or sureties of either of them for nonpayment by Contractor. Any such subcontract agreement shall also include a provision that Subcontractor agrees to perform its work in accordance with the standards and obligations established by this Agreement. With respect to any Services provided by a Subcontractor, Contractor remains primarily liable to Authority for fulfillment of all obligations stated in this Agreement, including the obligations stated in Article 16, Indemnity, of this Agreement. Nothing contained herein nor any course of conduct shall be construed to create any contractual relationship between Authority and any Subcontractor. Contractor shall provide to Authority an executed copy of each subcontract agreement, including any amendments thereto.

Subcontractor Name and Address

Services to Be Performed

RailPros, Inc.
25 Mauchly Drive, Suite 329
Irvine, CA. 92618
Tel. 714-734-8765
Fax 714-734-8755
Attn: Johnny Johnson

Engineering Services Technical Rail
Training Value Engineering
Maintenance Plans

Quality Sprayers, Inc.
1549 W. 17th Street
Long Beach, CA. 90813
Tel. 562-437-1033
Fax 562-435-5767
Attn: Michael Farquhar

Weed Abatement Services

Joshua Casey

Extended Training

Corporate Training
P.O. Box 25704
Anaheim, CA. 82825
Tel. 714-245-9440
Fax. 714-245-9443
Attn: Cari Elofson

Holland
1000 Holland Drive
Crete, IL. 60417
Tel. 360-941-0174
Fax 708-672-0119
Attn: Tony Winter

Geometry Car Testing & Associated
Reports

IESCO, Inc.
3445 Kashiwa Street
Torrance, CA. 90505
Tel. 310-257-8222
Fax 310-257-8220
Attn: Brian Shannon

Weld & Out of Track Testing for
Rail

14. INDEPENDENT CONTRACTOR

Contractor's relationship to Authority in the performance of this Agreement is that of an independent contractor. Contractor's personnel performing Services pursuant to the terms and conditions of this Agreement shall at all times be under Contractor's exclusive direction and control and shall be employees of Contractor and not employees of Authority. Contractor shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

15. INSURANCE

Throughout the duration of this Agreement, Contractor shall maintain the following insurance, which shall be full-coverage insurance, including all deductibles, not subject to self-insurance provisions. Contractor shall not of its own initiative cause such insurance to be canceled or materially changed during the course of this Agreement.

- 15.1.** Commercial General Liability to include Products/Completed Operations, independent contractor, Contractual Liability, and Personal Injury Liability; with at least the following limits of liability:

- 15.1.1. Primary Bodily Injury Liability Limits of \$10,000,000 per occurrence, and Primary Property Damage Liability Limits of \$10,000,000 per occurrence, or
- 15.1.2. Aggregate liability for both bodily injury and property damage liability of \$20,000,000.
- 15.2. Automobile Liability with the following limits:
 - 15.2.1. Primary Bodily Injury with limits of \$1,000,000 per occurrence and Primary Property Damage with limits of \$1,000,000 per occurrence, or
 - 15.2.2. Combined single limits of Liability for Primary Bodily and Primary Property Damage of \$2,000,000 per occurrence.
- 15.3. Workers' Compensation Insurance with the limits established and required by the State of California.
- 15.4. Employer's Liability with limits of \$1,000,000 per occurrence.
- 15.5. Environmental Pollution Liability with limits of \$4,000,000 per occurrence.
- 15.6. Inland marine coverage with limits of \$1,000,000 per occurrence.
- 15.7. Railroad Protective Liability Insurance
 - 15.7.1. Contractor shall provide, with respect to the operations Contractor or any of its Subcontractors perform on any property of Authority in accordance with criteria shown in "Rules and Requirements for Construction on Railway Property," Railroad Protective Liability Insurance, AAR, AASHTO (ISO/RIMA) form, in the name of:
 - 15.7.1.A. Insured:
 - Southern California Regional Rail Authority
 - 15.7.1.B. Additionally Insured:
 - BNSF
 - Los Angeles County Metropolitan Transportation Authority
 - Amtrak
 - Orange County Transportation Authority
 - Riverside County Transportation Commission
 - San Bernardino Associated Government
 - UP
 - Ventura County Transportation Commission
 - Others at the request of Authority

- 15.7.1.C. The policy shall have limits of liability of not less than \$5 million per occurrence, combined single limit, for coverage and for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of Property, including the loss of use thereof. A \$25 million annual aggregate shall apply.
- 15.7.1.D. Contractor shall furnish inland marine insurance coverage for Authority-owned or rented equipment. Contractor's obligation to obtain inland marine coverage does not waive any Contractor responsibilities for insurance coverage as required in this Article 15, Insurance.
- 15.7.1.E. Prior to commencement of any work hereunder, Contractor shall furnish to Authority's Contract Administrator an endorsement showing the required insurance coverages for Contractor and further providing that:
- 15.7.2.** Authority, its officers, directors, employees, Member Agencies and agents are named as an additional insured via endorsement on Contractor's Commercial General Liability and Automobile Liability insurance with respect to Contractor's performance hereunder; and
- 15.7.3.** The coverage shall be primary and noncontributory as to any other insurance with respect to liability hereunder; and
- 15.7.4.** Thirty (30) days' prior written notice of cancellation or of material change in coverage be given to Authority by endorsement.
- 15.7.5.** "Occurrence," as used herein, means any event or related exposure to conditions which result in bodily injury or property damage.
- 15.8.** Any deductibles or self-insured retentions must be declared to and approved by Authority. At the option of Authority, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Authority, its officials and employees; or (2) Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.
- 15.9.** Authority shall be responsible to provide all insurance pertaining to Authority-owned vehicles, including but not limited to auto liability and collision coverage naming Contractor as additional insured. Upon mutual agreement between Contractor and Authority, if Contractor's negligence caused an insurance claim, Contractor shall be responsible for a mutually agreed-to deductible amount not to exceed \$1,000.00 per occurrence. Authority's obligation to provide insurance with respect to Authority-owned vehicles does not waive any Contractor responsibilities for insurance coverage as required in this Article 15.

16. INDEMNITY

16.1. Except as otherwise provided in this paragraph, Contractor shall indemnify, defend and hold harmless Authority, and its Member Agencies, and their officers, directors, employees and agents ("Indemnified Parties") from and against any and all liability, expense (including but not limited to defense costs and attorneys' fees), claims, causes of action, and lawsuits for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage (including property of Contractor) arising from or connected with any alleged act and/or omission of Contractor, its officers, directors, employees, agents, Subcontractors or suppliers. Notwithstanding the foregoing, however, Contractor shall not be required to indemnify the Indemnified Parties for and to the extent of their active negligence or willful misconduct; accordingly, in the event that a court of competent jurisdiction issues a final judgment that assigns or allocates a certain percentage of comparative fault to the Indemnified Parties, as distinct from the Contractor, Contractor shall not be required to indemnify the Indemnified Parties for such percentage of comparative fault that is assigned or allocated to the Indemnified Parties, as distinct from the Contractor. Nothing in this section shall relieve Contractor of any liability for breach of this Agreement. Further, nothing in this section shall be construed to relieve an insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy. This indemnity shall survive termination of this Agreement and/or final payment thereunder.

16.2. Contractor shall be responsible for compliance with the provisions of all applicable regulations of FRA and CPUC, other entities with regulatory authority over the rail industry as well as all other applicable federal, state and municipal laws regarding the condition of the Service Property as such laws and regulations apply to the matters that are within the scope of this Agreement. Unless Authority has withheld from Contractor the funding specifically requested by Contractor to remedy a violation or other authority to remedy it, Contractor shall also indemnify, protect, defend and save Authority and its officers, agents and employees harmless from all fines, penalties, and liabilities imposed under such laws and regulations regarding the condition of the Service Property.

17. REVISIONS IN SCOPE OF SERVICE

By written notice or order, Authority may, from time to time, order Contractor to suspend work or make changes to this Agreement. Changes in the Services shall be mutually agreed to and incorporated into a written amendment to this Agreement executed by Authority and Contractor. Upon execution of any amendment, Contractor shall perform the Services as amended.

18. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced pursuant to or in connection with this Agreement shall be delivered to, and become the property of, Authority. Contractor may make copies for its records, but shall not furnish any product generated pursuant to or in connection with this Agreement to others without written authorization from Authority.

19. RIGHTS IN PROPERTY

- 19.1.** Authority shall provide access to the Service Property or such other property over which Authority exercises control as may be required by Contractor during the performance of the Services, as set forth in detail at Appendix A.
- 19.2.** Authority and all its designees shall have access at all reasonable times to the premises in which any Authority property is located for the purpose of inspecting Authority property.

20. EQUIPMENT AND MATERIALS

Upon completing its performance pursuant to this Agreement or at such earlier dates as may be fixed by Authority: (1) Contractor shall prepare and submit a final inventory list of all Authority-provided equipment and materials, including the description, location and condition of such equipment and materials; and (2) Contractor shall prepare for shipment, and deliver F.O.B. origin, all Authority equipment and material as may be directed or authorized by Authority.

21. STANDARD OF PERFORMANCE

- 21.1.** Contractor shall perform and exercise, and require its Subcontractors to perform and exercise, due professional care and competence in the performance of the Services in accordance with the requirements of this Agreement. Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Services, it being understood that Authority will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Services. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Agreement. The provisions of this Article 21 shall survive termination or expiration of this Agreement and/or final payment hereunder.

- 21.2.** All Contractor's personnel shall have sufficient skill and experience to perform the Services assigned to them. Authority shall have the right, at its sole discretion, to require the removal of Contractor's personnel at any level assigned to the performance of the Services at no additional fee or cost to Authority, if Authority considers such removal in its best interests, requests such removal in writing and such request is not done for illegal reasons. Further, an employee of Contractor who is removed from performing Services under this Agreement under this Section shall not be reassigned to perform Services without Authority's prior written authority.
- 21.3.** Contractor warrants and represents that it has the professional capabilities, qualifications, licenses, skilled personnel, experience, expertise and financial resources, and will provide the necessary tools and materials not provided by Authority, to perform the Services in an efficient, professional and timely manner.
- 21.4.** Contractor shall promptly notify Authority of all errors, inconsistencies, omissions, and/or non-conformities that it discovers; and, in instances where such errors, inconsistencies, omissions and/or non-conformities are discovered, shall obtain specific instructions in writing from Authority before Contractor proceeds with any Services so affected. Any Services so affected which are performed prior to Authority's decision shall be performed at Contractor's sole risk. Contractor shall not take advantage of any apparent error, inconsistency, omission, and/or non-conformity that may be found in this Agreement. Authority shall be entitled to make such corrections and interpretations as Authority may deem necessary for the fulfillment of the intent of this Agreement. Omissions or misdescriptions of any Services that are manifestly necessary to carry out the intent of this Agreement, or that are customarily performed, shall not relieve Contractor from performing such Services and Contractor shall perform such Services as if fully and correctly set forth in this Agreement.

22. DISPUTE RESOLUTION

22.1. SETTLEMENT OF DISPUTES

The parties hereto shall make every reasonable effort to settle any dispute arising out of or in connection with this Agreement through good faith discussion between the parties' respective designated representatives. Authority and Contractor shall make every reasonable effort to meet within thirty (30) calendar days of the inception of any dispute to discuss disputes arising under Article 6. If the parties so agree, they may involve a disinterested person experienced in maintenance of way services, and/or an accountant, as appropriate, to render his or her objective advice and opinions, which shall be advisory only and not

binding unless the parties agree in writing to be bound by such advice or opinions in a particular instance.

22.2. CONTROVERSIES SUBJECT TO MEDIATION OR INDEPENDENT AUDIT

Any claim or controversy between Authority and Contractor which cannot be resolved by the parties concerning the interpretation, application, or implementation of this Agreement shall be submitted to a mediator or independent auditor pursuant to the provisions of this Section; provided, however, that no such claim or controversy shall be submitted to a mediator or independent auditor until it has first been submitted to Authority's Director of Engineering & Construction and Contractor's General Manager for resolution between them.

22.3. MEDIATOR/INDEPENDENT AUDITOR

22.3.1. Authority and Contractor shall jointly select a mediator or independent auditor within twenty-one (21) calendar days after the submittal of a dispute under this Section. The selected mediator or independent auditor shall be properly qualified in the required areas of public sector finance and/or the surface transportation industry, and shall have experience in the analysis of transportation operating and capital costs and revenues and transportation operational issues.

22.3.2. The mediator or independent auditor shall meet with the parties within twenty-one (21) calendar days after such auditor's selection to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) calendar days, the mediator or auditor shall, after consideration of the parties' positions and written submittals, if any, issue written recommendations for resolution of the dispute. Any such written submittals shall be postmarked by the tenth calendar day after the parties' last meeting with the mediator or auditor. The recommendations of the mediator or independent auditor shall be issued within thirty (30) calendar days after the later of the conclusion of mediation or the submittal of written positions, if any. All meetings and proceedings shall be held in Los Angeles County, California, at a time and location acceptable to both parties.

22.4. PENDING RESOLUTION

Except as provided specifically in other Sections of this Agreement, while such mediation is proceeding, the business, the operations to be conducted, physical plant to be used, and compensation for Services under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the mediator/independent auditor shall make a preliminary ruling to the contrary.

22.5. COST OF MEDIATION

Each party hereto shall bear the costs and expenses incurred by it in connection with such mediation. The cost of the mediator or independent auditor shall be shared equally between the parties.

22.6. ENFORCEMENT

If a dispute is not resolved through mediation, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction.

23. LIQUIDATED DAMAGES

Authority shall be damaged if Contractor fails to perform the Services adequately or in a timely manner. For certain performance failures, actual damages to Authority may be difficult or impractical to determine. Accordingly, Contractor agrees to pay Authority Liquidated Damages as set forth in this Article 23 and as otherwise provided in this Agreement. Such Liquidated Damages are intended to reasonably compensate Authority for harm or injury caused by Contractor and not susceptible to quantification, and shall not be deemed to be a penalty.

23.1. TRAIN PERFORMANCE

Contractor agrees to pay Authority Liquidated Damages as follows in connection with any failure by Contractor to prevent Contractor's performance of the Services from interfering with Authority Commuter Railroad Operations:

23.1.1. Contractor agrees to pay Authority Liquidated Damages as follows:

23.1.1.A. \$2,500 for each train that leaves the Los Angeles Union Station Terminal or any Authority intermediate station more than ten (10) minutes but less than thirty (30) minutes later than the time stated in Metrolink's public timetable, if the primary cause of the delay is directly attributable to a negligent act or omission of Contractor, a Contractor employee or Subcontractor. Such \$2,500 amount will increase by \$500 every three years for the life of this Agreement.

23.1.1.B. \$5,000 for each train that leaves Los Angeles Union Station or any intermediate SCRRA thirty (30) minutes or more later than the time stated in Metrolink's public timetable, if the primary cause of the delay is directly attributable to a negligent act or omission of Contractor, a Contractor employee or Subcontractor. Trains annulled or terminated will be considered 20 minutes late for the purpose of this Liquidated Damage calculation. This \$5,000 amount

will increase by \$1,000 every three years for the life of this Agreement.

23.1.1.C. The cumulative maximum Liquidated Damages assessed for any single calendar day shall be limited to a maximum of \$10,000 and the maximum for any single calendar month shall be \$50,000. The \$10,000 amount set forth in this Subsection will increase by \$1,000 every three years and the \$50,000 amount set forth in this Subsection will increase by \$10,000 every three years for the life of this Agreement.

23.1.2. Liquidated Damages for Train Performance will be based upon the difference between actual and scheduled departure times of the train, minus any other delays to that trip identified by Authority's Director of Engineering or his or her designee, at the train's station. Liquidated Damages will apply only to any train directly delayed by Contractor and will not apply to any other train delayed by such train. To the extent possible, delay times will be determined by replays of Authority's Digicon dispatch system or by utilizing other train arrival monitoring system as Authority may adopt in the future.

23.1.3. Authority, at its sole discretion, may consider mitigating factors including whether other entities, such as Train Operations Contractor, Equipment Maintenance Contractor or the C&S Maintenance Contractor contributed in part to any delay.

23.1.4. Delays caused solely by scheduled and approved maintenance work, including but not limited to the operation of Track Geometry Cars and performance of rail defect inspections, are not subject to these Liquidated Damages. However, if the scheduled or approved maintenance work overruns the durations approved by Authority, then Liquidated Damages for any delay will be assessed. Delays caused solely by undetected rail failures, provided that all inspections required under this Agreement have been timely performed, are not subject to these Liquidated Damages. Delays caused solely by defects or speed restrictions attributable to scheduling of the R&R program are not subject to these Liquidated Damages.

23.2. QUALITY CONTROL REPORTING

23.2.1. Contractor's monthly QAP report is a required deliverable under this Agreement. Each month, Contractor shall be assessed Liquidated Damages for late or incomplete reports because the failure to timely provide complete reports will be detrimental to Authority, and the injury to Authority will be difficult to quantify.

23.2.2. The Liquidated Damages assessed shall be the amount stated in Section 3.4.2.E.

23.3. STAFF VACANCIES

Contractor will be liable to Authority in the amount of \$600 per calendar day, computed in accordance with Section 3.2.1.A.2 for each day Contractor fails to fill the position of MCM, or other Key Staff vacancy.

23.4. EQUIPMENT

Contractor shall be liable to Authority for any Contractor-maintained Authority equipment not operable for over three calendar days in the amount of \$500 per day.

24. SUBMITTAL OF CLAIMS BY CONTRACTOR

Contractor shall file any and all claims with Authority's Contract Manager in writing within thirty (30) days of the event or occurrence giving rise to the claim. Contractor shall submit such claim and provide sufficient detail to enable Authority to ascertain the claim's basis and amount, and shall describe the date, place and other pertinent circumstances of the event or occurrence giving rise to the claim and the indebtedness, obligation, injury, loss or damages allegedly incurred by Contractor. Contractor shall continue to perform in accordance with this Agreement notwithstanding any pending claims Contractor may have submitted to Authority.

25. EQUAL OPPORTUNITY

25.1. Contractor shall not discriminate, or grant preferential treatment to, any individual or group, or any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Contractor shall take action to insure that applicants are employed, and that employees are treated during employment without regard to their status with respect to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, and selection for training, including apprenticeship.

25.2. Contractor shall provide to Authority, not later than the fifteenth (15th) day of each month, Contractor's Monthly Employment Utilization Report (MEUR) covering the preceding month's Service activity. This report shall contain information on all personnel performing Services pursuant to this Agreement. Subcontractors shall also provide the same reports, through Contractor, by the fifteenth (15th) day of the month subsequent to the reporting period.

- 25.3.** Contractor shall include the following assurance clause regarding Non-Discrimination in every subcontract agreement:

"Contractor shall not discriminate on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation in the performance of this Agreement. Contractor shall carry out applicable requirements of federal law. Failure by Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Southern California Regional Rail Authority deems appropriate."

26. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), Authority has adopted a Disadvantaged Business Enterprise (DBE) Program, in conformance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs". This DOT-assisted project is subject to these stipulated regulations, which are hereby incorporated in their entirety by this reference. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

In the event of any conflicts or inconsistencies between the Regulations and Authority's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

26.1. NEW RACE NEUTRAL DBE POLICY IMPLEMENTATION

26.1.1. Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals' decision in *Western States Paving Co. v. Washington State Department of Transportation* and applicable FTA Guidance (Docket No. FTA-2006-24063; dated March 23, 2006) stipulating a Notice of New Policy implementation to Western States Public Transportation Providers, Authority has implemented a wholly race-neutral DBE Program.

26.1.2. A race-neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a race-neutral DBE Program, Authority does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. Contractor shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted Agreement.

However, Contractor shall adhere to any and all race-neutral DBE participation commitment(s) made at the time of contract award.

26.2. RACE-NEUTRAL DBE PARTICIPATION COMMITMENT

As of the Effective Date of this Agreement, Contractor has committed to utilize DBEs in the performance of this DOT-assisted Agreement as noted in the Special Conditions, and further agrees to ensure that DBE Subcontractors listed on the **“DBE Race Neutral Participation Listing”** form (Exhibit 1) perform work and/or supply materials as listed in accordance with original commitments, unless otherwise directed and/or approved by Authority prior to Contractor’s effectuating any changes to its race-neutral DBE participation commitment(s) (Refer to Subsection G: *“Performance of DBE Subcontractors”*).

26.3. CONTRACTOR’S RACE-NEUTRAL DBE REPORTING REQUIREMENTS

26.3.1. Contractor shall complete and submit the following DBE reporting forms at the times specified:

26.3.1.A. “DBE Race-Neutral Participation Listing” – Exhibit 1. If Contractor is a DBE, intends to utilize DBE Subcontractors or purchases goods or services from DBE vendors or DBE suppliers during the performance of this Agreement, Contractor shall complete and submit the **“DBE Race-Neutral Participation Listing” Exhibit 1** to document any race-neutral DBE participation under this Agreement. Contractor must provide the following information for each DBE that Contractor engages in connection with this Agreement:

1. The complete name and address of each DBE
2. A description of the work that each DBE will perform or goods or services such DBE will provide
3. The dollar amount of the work that each DBE will perform or goods or services such DBE will provide
4. Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26

26.3.1.B. Contractor shall also submit, for each DBE engaged under this Agreement, a written confirmation from the DBE acknowledging that it is participating in the work set forth in this Agreement for a specified value, including the corresponding scope of work. Authority will accept a subcontract agreement in lieu of such written confirmation.

26.3.2. In the event that Contractor does not intend to utilize DBEs in the performance of this Agreement, Contractor shall indicate “None” on the form.

26.3.3. Contractor shall submit a signed and completed “DBE Race-Neutral Participation Listing” form with the executed contract documents.

26.4. AUTHORITY FORM 103 – “MONTHLY RACE-NEUTRAL DBE SUBCONTRACTORS PAID REPORT SUMMARY AND PAYMENT VERIFICATION” (FORM 103)

26.4.1. If Contractor is a DBE firm and/or has proposed to utilize DBE firms, Contractor will be required to complete and submit Form 103 (Exhibit 2) to Authority by the 15th of each month until completion of this Agreement to facilitate reporting of race-neutral DBE participation, following the first month of contract activity. Contractor shall show the total dollar figure paid to DBEs engaged in connection with this Agreement through the applicable reporting period, including the scope of work or services performed or provided and the corresponding subcontract dollar value of such DBE’s work. Contractor is advised not to credit the participation of DBEs on the respective reporting form until the amount being credited has been paid to the DBE firm.

26.4.2. Upon completion of the term of this Agreement, Contractor will be required to prepare and submit to Authority a “Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification” (Form 103) Exhibit 3 clearly marked “Final” to facilitate reporting and capturing actual DBE race-neutral utilization. Contractor shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of this Agreement.

26.5. DBE ELIGIBILITY AND COMMERCIALY USEFUL FUNCTION STANDARDS

26.5.1. A DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.

26.5.2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company.

26.5.3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital

contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

26.5.4. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

26.5.5. DBEs must be certified by the California Unified Certification Program. Listings of DBEs certified by the **California Unified Certification Program are available from the following sources:**

- a. The Caltrans "Civil Rights" web site, which can be accessed at <http://www.dot.ca.gov/hq/bep>.
- b. The Caltrans DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

26.6. DBE CREDITING PROVISIONS

26.6.1. When a DBE is proposed to participate in the work set forth in this Agreement, either as a prime Contractor or Subcontractor, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If Contractor is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.

26.6.2. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor is a certified DBE and actually performs the work with its own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Contractor's race-neutral DBE attainment.

26.6.3. Contractor must calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:

- a. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under this Agreement, obtained from a regular dealer; or

- b. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under this Agreement, obtained from a DBE manufacturer.

26.6.4. The following types of fees or commissions paid to DBE Subcontractors, brokers, and packagers may be credited toward the prime Contractor's race-neutral DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:

- a. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of this Agreement;
- b. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
- c. Fees and commissions charged for providing any insurance specifically required in the performance of this Agreement.

26.6.5. Contractor may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:

- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on this Agreement.
- c. The DBE receives credit for the total value of the transportation services it provides on this Agreement using trucks it owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on this Agreement.
- e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- f. For purposes of this Section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

26.6.6. If Contractor listed a non-certified DBE 1st tier Subcontractor to perform work in connection with this Agreement, and the non-certified DBE Subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation in connection with this Agreement.

26.6.7. Contractor is advised not to count the participation of DBE Subcontractors toward Contractor's race-neutral DBE attainment until the amount being counted has been paid to the DBE.

26.7. PERFORMANCE OF DBE SUBCONTRACTORS

26.7.1. DBE Subcontractors listed by Contractor in its "DBE Race-Neutral Participation Listing" (SCRRA Form Exhibit 1) submitted with the executed contract documents shall perform the work and supply the materials for which they are listed, unless Contractor has received prior written authorization from Authority to perform the work with other forces or to obtain the materials from other sources.

26.7.2. Contractor shall provide written notification to Authority in a timely manner of any changes to its anticipated race-neutral DBE participation. This notice should be provided prior to the commencement of that portion of the work.

26.8. ADDITIONAL DBE SUBCONTRACTORS

In the event Contractor identifies additional DBE Subcontractors or suppliers not previously identified by Contractor for race-neutral DBE participation under the contract, Contractor shall notify Authority by submitting **Exhibit 4 "Request for Additional DBE Firm"** to enable Contractor to capture all race-neutral DBE participation. Contractor shall also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in this Agreement for a specified value, including the corresponding scope of work. Authority will accept a subcontract agreement in lieu of such written confirmation.

26.9. DBE CERTIFICATION STATUS

If a listed DBE Subcontractor is decertified during the life of the project, Contractor must required the decertified subcontractor to notify Contractor in writing with the date of decertification. If a non-DBE Subcontractor becomes a certified DBE during the life of the project, Contractor must require such DBE Subcontractor to notify Contractor in writing with the date of certification. Contractor shall furnish any such documentation to Authority in a timely manner.

27. NOTIFICATION OF EMPLOYMENT OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY BOARD MEMBERS/ALTERNATES AND EMPLOYEES

To ensure compliance with Authority's Ethics Policy, Contractor shall provide written notice to Authority disclosing the identity of any individual who Contractor desires to employ or retain under a contract, and who (1) presently serves as a Board Member/Alternate or an employee of Authority, or (2) served as a Board Member/Alternate or an employee of Authority within the previous 12 months of the date of the proposed employment or retention by Contractor. Contractor's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Agreement.

28. DISQUALIFYING POLITICAL CONTRIBUTIONS

In the event of a proposed amendment to this Agreement, Contractor shall provide a written statement disclosing any political contribution(s) of \$250 or more made by Contractor or any Subcontractor within the preceding twelve (12) months of the date of the proposed amendment. Contributions for which disclosure is required include those made by any agent, person or entity on behalf of Contractor or Subcontractor.

29. COMPLIANCE WITH LAW

Contractor shall familiarize itself with and perform the Services required under this Agreement in conformity with the requirements and standards of Authority, municipal and public agencies, public and private utilities, special districts, and railroad agencies whose facilities and services may be affected by Services under this Agreement. Contractor shall also comply with all federal, California and local laws and ordinances.

30. COMPLIANCE WITH RULES AND REGULATIONS

30.1. General. Contractor shall be responsible for compliance with the provisions, including any successor provisions, of all applicable regulations of FRA and other entities with regulatory authority over the rail industry as

well as other applicable federal, state and local laws regarding the provisions of the Services as they apply to the matters that are within the scope of this Agreement. Unless Authority has withheld from Contractor the funding specifically requested by Contractor to remedy a violation or other authority to remedy it, Contractor shall also indemnify, protect and defend and save Authority and its officers, agents and employees harmless from all fines, Liquidated Damages and liabilities imposed under such laws and regulations regarding the Services.

- 30.2. Changes in Law.** If any changes are made to any law or regulation affecting the Services as described in this Agreement between the date of submission of Contractor's Cost Proposal and during the term, including any options, if exercised, and such changes have an impact on Contractor's cost to provide the Services, the budget shall be amended pursuant to Section 5.7.

31. COMPLIANCE WITH LOBBYING POLICIES

- 31.1.** Contractor agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by Authority in its Ethics Policy, it shall comply or ensure that Authority's Lobbying Firm, Lobbyist or both of them, as the case may be, complies with Authority's Ethics Policy.
- 31.2.** If Contractor as Lobbyist Employer or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with Authority's Ethics Policy, such failure shall be considered a material breach of this Agreement and Authority shall have the right to immediately terminate or suspend this Agreement.

32. PUBLIC RECORDS ACT

- 32.1.** All records, documents, drawings, plans, specifications and other material relating to conduct of Authority's business, including materials submitted by Contractor in its proposal and during the course of performing the Services under this Agreement, shall become the exclusive property of Authority and may be deemed public records. Said materials may be subject to the provisions of the California Public Records Act. Authority's use and disclosure of its records are governed by this Act.
- 32.2.** Authority will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act, including interpretations of the Act or the definitions of such terms as "trade secret", "confidential" or "proprietary". Authority will accept materials clearly and prominently labeled "TRADE SECRET", "CONFIDENTIAL" or "PROPRIETARY" as Contractor may so determine. Authority will endeavor

to notify Contractor of any request received by Authority to disclose such materials. Under no circumstances, however, will Authority be liable or responsible for the disclosure of any labeled materials whether the disclosure is required by law or a court order or occurs through inadvertence, mistake or negligence on the part of Authority or its officers, employees and/or Contractors.

32.3. Contractor, and each of its Subcontractors, shall be solely responsible for all determinations made under the California Public Records Act, and for clearly and prominently marking each and every page or sheet of information with “TRADE SECRET”, “CONFIDENTIAL”, or “PROPRIETARY” as Contractor or any Subcontractor determines to be appropriate. Contractor shall contact its own legal counsel concerning the California Public Records Act and its applicability to Contractor’s own circumstances.

32.4. In the event of litigation concerning the disclosure of any material submitted by Contractor, Authority’s sole involvement will be as a stake holder, retaining the material until otherwise ordered by a court. Contractor, at its sole expense and risk, shall be responsible for prosecuting or defending any action concerning the materials, and shall defend, indemnify and hold Authority harmless from all costs and expenses, including attorneys’ fees, in connection with such action.

33. CONFIDENTIALITY

Contractor agrees that for and during the entire term of this Agreement, any information, data, figures, records, findings and the like received or generated by Contractor in the performance of this Agreement shall be considered and kept as the private and privileged records of Authority and will not be divulged to any person, firm, corporation, or other entity except on the prior written authorization of Authority. Further, upon expiration or termination of this Agreement for any reason, Contractor agrees that it will continue to treat as private and privileged any information, data, figures, records and the like, and will not release any such information to any person, firm, corporation or other entity, either by statement, deposition, or as a witness, except upon prior written authority of Authority or as otherwise ordered by a court having jurisdiction of the matter.

34. CONTRACTOR’S INTERACTION WITH THE MEDIA, THE PUBLIC AND EXTERNAL REGULATORY AGENCIES

34.1. Authority shall review and approve in writing all Authority-related copy proposed to be used by Contractor for advertising or public relations purposes prior to any publication of such material. Contractor shall not allow Authority-related copy to be published in its advertisements and public

relations programs prior to receiving such approval. Contractor shall ensure that all published information is factual and that it does not in any way imply that Authority endorses Contractor's firm, service, or product.

- 34.2.** Contractor shall cooperate with regulatory agencies including the FRA, the CPUC and other external regulatory agencies to Authority and shall refer all inquiries from regulatory agencies when and where possible to Authority for handling.
- 34.3.** Contractor shall refer all inquiries from any news media organization to Authority, and shall comply with the procedures of Authority's Public Affairs staff regarding statements to the media relating to this Agreement or the Services.
- 34.4.** If Contractor receives a complaint from any citizen or purported community representative, Contractor shall inform Authority as soon as possible and inform Authority of any action Contractor has taken with respect to such complaint.
- 34.5.** The provisions of this Article 34 shall survive the termination or expiration of this Agreement.

35. CLASSIFICATION OF CONTRACTOR'S LICENSE

Throughout the duration of this Agreement, Contractor and its Subcontractors, if any, shall possess the appropriate license(s) including those issued by the California State License Board to perform the Services specified herein.

36. LABOR COMPLIANCE AND PAYMENT OF PREVAILING WAGES

- 36.1.** Contractor shall comply with all provisions of the Labor Code of the State of California, including without limitation, employment and training programs established by the State of California Department of Industrial Relations – Division of Apprenticeship Standards, pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1773 and 1773.1, as such statute may be amended. However, if any work is Federally assisted, Contractor must also comply with Federal labor standards, including the Davis-Bacon requirements,.
- 36.2.** Under the provisions of the California Labor Code, the wages required to be paid by Contractor for this particular Agreement will be in accordance with the Special Prevailing Wage Determinations set forth at Appendix O. These wage determinations were issued for this particular Agreement by the Director, California State Department of Industrial Relations ("DIR") and

establish the prevailing hourly rate in dollars and details pertinent thereto for each craft, classification or type of workers or mechanic needed to implement this Agreement. Contractor acknowledges that if this Agreement is modified or extended, new wage determinations may be issued by the DIR, which may increase the prevailing wage rates set forth in the Special Prevailing Wage Rate Determinations. In such event, Contractor acknowledges and agrees that it is bound by and will comply with the obligation to pay such increased prevailing wage rates without additional compensation from the Authority. If any portion of the work required to be performed pursuant to this Agreement is Federally assisted, then the U.S. Department of Labor will ascertain the prevailing hourly rate. However, if Federal and State wage rates both are applicable, then the higher of the two will prevail.

- 36.3.** Labor Compliance Monitoring. Contractor and all Subcontractors shall submit labor compliance reports during the course of this Agreement in accordance with Authority's Labor Compliance Program and California and Federal statutes and regulations. These forms are attached hereto at Appendix P. Authority reserves the right to modify these reporting forms/requirements as it deems appropriate.
- 36.4.** Certified Payroll Records. Contractor shall maintain and furnish to Authority, on a monthly basis, a certified copy of each weekly payroll containing a Statement of compliance signed under penalty of perjury, as required by California Labor Code and Authority's Labor Compliance Program. Contractor shall be responsible for the submission of copies of payrolls of any Subcontractors. Contractor shall forfeit to Authority twenty-five dollars (\$25.00) per day, per worker for failing to comply with the payroll record requirements of Section 1776(a) of the California Labor Code.
- 36.5.** Withholding Payments for Labor Compliance Violations. Authority may withhold from any monies payable to Contractor such sums as may be administratively determined to be necessary to satisfy any liabilities of Contractor or its Subcontractor for unpaid wages in addition to Liquidated Damages as specified elsewhere in this Agreement.

37. SECTION 13(c) COMPLIANCE

- 37.1.** Unless otherwise provided in this Agreement, Authority shall be legally and financially responsible for any claims or obligations imposed by Section 13(c) of the Federal Transit Act (codified at 49 U.S.C. §5333(b)) or under Authority's Section 13(c) arrangement when such claims or obligations arise in connection with the provision of the Services when such claims or obligations arise as a result of any actions or requirements of Authority. Authority shall indemnify and hold Contractor harmless for any Section

13(c) claims or obligations described in this Section that are the responsibility of Authority. The parties specifically agree that termination of this Agreement pursuant to Article 9, Termination for Breach of Agreement or at the expiration of the term of this Agreement, including failure to exercise any option to renew this Agreement, shall not be considered an action of Authority that requires Authority to indemnify Contractor for any such claims or obligations.

37.2. The responsibilities of Contractor relating to Section 13(c) shall be as follows:

37.2.1. Contractor shall be financially and legally responsible for any Section 13(c) claims or other Section 13(c) obligations that arise out of acts or omissions of Contractor in connection with the performance of the Services, including any work performed by Subcontractors, that are not directly or expressly approved in writing by Authority. Contractor shall indemnify and hold Authority harmless for any Section 13(c) claims or obligations described in this Section that are the responsibility of Contractor.

37.2.2. Contractor agrees to afford to the employees of the current contractor who prior to the Start Date, are providing the services covered by this Agreement a priority in hiring for positions with Contractor. Contractor may independently establish reasonable qualifications for hiring, and may utilize such qualifications in the hiring process, including in connection with the hiring of any existing employees afforded a priority under this Section. Contractor shall provide to Authority a description of the process it will use to comply with this Section, including the procedure it will use in hiring and the training it will offer to assist existing employees now performing the Services covered by this Agreement to qualify for positions. Contractor must require that any Subcontractor comply with the requirements of this Section 37.2.2.

37.2.3. Contractor shall bargain collectively with any labor organization that is selected by its employees in accordance with applicable law, and shall comply with the terms and conditions of any collective bargaining agreement that Contractor enters into with such labor organization.

37.2.4. Contractor shall promptly provide Authority with all information Authority may request in connection with Authority's administration of its Section 13(c) obligations, including but not limited to the resolution or defense of Section 13(c) claims or disputes, and the negotiation of agreements or settlements over issues that may arise in connection with or relate to the Services. Contractor shall cooperate fully with Authority to avoid and minimize any Section 13(c) liability relating to the Services.

37.2.5. The Capital Assistance Protective Arrangements Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53 for Authority, ATU, IBT, SEIU, IBEW, BLE, SCCC, NCEA and ALADS, CA-90-X908, dated May 6, 1999, and for Authority, the United Transportation Union, the Transportation-Communications International Union and the American Train Dispatchers Association, CA-90-X908 also dated May 6, 1999, which have been applied as well to other federal funds received by Authority for other projects, and other grants including CA909908, CA030552, CA909011, CA900077, CA900077-01, CA900077-02, CA030662-00, CA90Y267-00, CA030695-00, CA90Y323-00, CA260048-00, CA260049-00, CA37X052-00, CA37X068-00, CA030747-00, CA90Y412-00, CA050205-00, CA90Y477-00, CA, CA050208-00, CA90Y489-00, CA-04-0045, CA-05-0223, CA-90-Y579, require any person, enterprise, body or agency which shall undertake the provision and/or operation of Authority's system, or any part or portion thereof, to agree to be bound by the terms of those arrangements and accept the responsibility with Authority for full performance of those conditions. Contractor agrees to be bound by the terms of those arrangements and accepts the responsibility with Authority, as allocated in Sections 37.B.2 and 37.B.3 above of this Section, for full performance of these conditions.

38. LIMITATIONS ON COVENANTS NOT TO COMPETE

Contractor acknowledges that in the context of employment agreements, covenants not to compete, sometimes referred to as non-competition or non-compete clauses, are, with limited exceptions, void and unenforceable in California. If Contractor or any Subcontractor has any employment agreements that contain covenants not to compete that are not supported by an exception pursuant to California law, Contractor or such Subcontractor shall void any such covenant or modify such covenant by clearly stating such covenant is void and unenforceable in California. Contractor also agrees that neither it nor any Subcontractor shall intentionally enter into an employment agreement that Contractor or Subcontractor, as the case may be, knows is void and unenforceable in California. Any violation by Contractor of the requirements of this Article 38 shall be considered a material breach of this Agreement and shall entitle Authority to (1) take any and all measures and (2) seek any and all remedies provided by this Agreement and as authorized by law and equity.

39. TRACK AND SITEWORK COORDINATION

Contractor shall coordinate and at all times fully cooperate with any other entity or individual performing work on Authority property, including, but not limited to, maintenance of Tracks, signals, or Structures, or construction of track, signals, Structures, stations, or other facilities. Contractor shall not seek reimbursement from Authority for any costs incurred by Contractor to meet the requirements of this Article.

40. TRAIN SERVICE SCHEDULE AND ESTIMATES

- 40.1.** Authority will provide Contractor with current train schedules for Authority Commuter Railroad Operations in the Service Property. Contractor shall plan for and implement provisions of the Services in a manner that takes into consideration these train schedules. Authority will advise Contractor of any special train service. Authority shall provide its schedule only for Contractor’s information and convenience in scheduling the provision of the Services.
- 40.2.** Scheduled Passenger Trains: Contractor shall refer to Authority and Amtrak public train schedules issued during the time period of this Agreement. Contractor shall provide copies to Authority upon request. Authority reserves the right to alter, add, or subtract train schedules at any time.
- 40.3.** Freight Trains: BNSF and UP freight trains are not scheduled and the time of operation and quantity of trains may vary significantly from the summary set forth below. Contractor agrees that it has not relied upon the accuracy of such daily estimated freight train operation and will not seek any additional compensation or adjustment of time for any variation, no matter how significant, to the estimated daily operation shown below. The estimated freight train operation per week day is listed below; fewer trains may operate on weekends.

Route	Number of Freight Trains
Lancaster to Burbank Junction	7
Moorpark to Burbank Junction	7
Dayton to Burbank Junction	12
Dayton to 9 th Street (East Bank)	24
Dayton to Olympic (West Bank) (2)	12
Pasadena Junction to El Monte (1)	1
El Monte to Upland	2
Upland to Kaiser	6
Kaiser to San Bernardino	8
Atwood to County Line	8
Maple to Fullerton Junction	4

- (1) Includes out of service passenger equipment
- (2) Includes engines without trains

- 40.4.** Other Trains: Trains may be operated for other purposes by Authority, Amtrak, UP or BNSF. Such special purpose trains may be operated in connection with public events, private charters, inspections, material

handling, or other purposes. Contractor may not seek any additional compensation due to operation of such other trains.

41. FEDERAL REQUIREMENTS

41.1. APPLICABILITY OF FEDERAL GRANT AGREEMENT

This Agreement may be subject to one or more financial assistance agreements between Authority and the U.S. Department of Transportation, and which incorporate FTA Master Agreement and Circular 4220.1E, current as of the effective date of any such financial assistance agreement. Contractor and its Subcontractors are required to comply with all terms and conditions prescribed for third party agreements in such documents. Federal laws, regulations, policies and administrative practices may be modified or codified after the Effective Date of this Agreement and may apply to this Agreement. To assure compliance with changing Federal requirements, acceptance of this Agreement indicates that Contractor agrees to accept all changed requirements that apply to this Agreement.

41.2. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, the Master Grant Agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with any other provision in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority request that would cause Authority to be in violation of the FTA terms and conditions.

41.3. FEDERAL FUNDING LIMITATION

Contractor understands that a portion of the funds to pay for Contractor's performance for CTO work under this Agreement are anticipated to be made available from the United States Department of Transportation through FTA. All funds must be approved and administered by FTA. A portion of Authority's obligation hereunder may be payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, Authority may terminate or suspend Contractor's services without penalty. Authority shall notify Contractor promptly in writing of any non-allocation, delay, or disapproval of funding.

41.4. AUDIT AND INSPECTION OF RECORDS

41.4.1. Contractor shall maintain a complete set of records relating to this Agreement in accordance with generally accepted accounting procedures. Contractor shall permit the Authorized Representatives of Authority, the

U.S. Department of Transportation, and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor and all of its Subcontractors, relating to Contractor's and any Subcontractors' performance under this Agreement until the expiration of three (3) years after final payment under this Agreement. Such periods of access and examination will continue until all disputes, claims, litigation, appeals and exceptions have been resolved. Authority shall have the right to reproduce any of Contractor's or any Subcontractor's books, records or accounts. All such books, records, accounts and documents shall be maintained and be accessible to Authority for three (3) years after completion or termination of this Agreement for any reason; provided, however, that in the event of litigation or settlement of claims arising from the performance of this Agreement, Contractor agrees to maintain all records until Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of such litigation, appeals, claims or exceptions related thereto. For purposes of audit, the date of completion of this Agreement shall be the date of Authority's payment for Contractor's final billing, as so noted on Contractor's invoice, pursuant to this Agreement.

41.4.2. Contractor further agrees to include in all of its subcontracts under this Agreement a provision to the effect that the Subcontractor agrees that Authority, the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their duly Authorized Representatives shall, until the expiration of three (3) years after final payment under such subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the Subcontractor. The term "subcontract" as used in this Section excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

41.4.3. The periods of access and examination described above for records that relate to (1) disputes between Authority and Contractor; (2) litigation or settlement of claims arising out of the performance of this Agreement; or (3) any payment by Authority shall be subject to a reasonable audit, in accordance with Generally Accepted Accounting Practices, and evaluation of operations, performance, and costs. The scope of such audit and evaluation may be either financial or operational, or both, and may include, in addition to costs and wages reimbursed by Authority, Contractor's controls, practices, and procedures and their effect upon the efficiency and quality of performance provided by Contractor. Upon completion of the audit, any adjustments required to make any reconciliation required shall be paid or credited, as the case may be, in accordance with the payment provisions of this Agreement.

41.4.4. Costs and expenses of this Agreement as to which exception has been taken by the Comptroller General or any of his or her duly Authorized Representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

41.5. NONRESTRICTIVE CLAUSES

41.5.1. Wherever brand, manufacturer or product names are indicated in Authority's specifications, they are included for the purposes of establishing identification and a general description of any item specified. Wherever such names appear, the term "OR APPROVED EQUAL" is considered to follow. The decision whether to accept any proposed equivalent product proposed by Contractor will be rendered by Authority.

41.5.2. Contractor acknowledges and agrees that if Authority specifies a brand name, components and/or equipment in any specification, such identification shall not relieve Contractor from its responsibility to produce such specified product in accordance with the performance warranty and contractual requirements set forth in this Agreement. Contractor is responsible for notifying Authority of any inappropriate brand name, component and/or equipment that may be called for in Authority's specifications, and to propose a suitable substitute for Authority's consideration.

41.6. WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

41.6.1. Contractor whose employees are performing safety-sensitive functions, as defined by FTA rules applicable to Authority, shall comply with the FTA drug and alcohol testing regulations set forth at 49 CFR Part 655, as such statute may be amended, and U.S. Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs set forth at 49 CFR Part 40, as such regulation may be amended. Contractor's failure to comply with the requirements of this Section 41.6.1 will entitle Authority to suspend or terminate this Agreement or to withhold payment of all or part of any Contractor invoice.

41.6.2. For purposes of this compliance program, safety-sensitive employees are defined as those employees whose job functions are, or whose job descriptions include, the performance of functions related to the safe operation of mass transportation service. Any supervisor who performs or whose job description includes the performance of any function listed below is also considered a safety-sensitive employee. The following are categories of safety-sensitive functions:

- a. Operating a revenue service vehicle, including when not in revenue service;

- b. Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's License (CDL);
- c. Controlling dispatch or movement of a revenue service vehicle or equipment used in revenue service;
- d. Maintaining revenue service vehicles or equipment used in revenue service; and
- e. Carrying a firearm for security purposes.

41.7. PREFERENCE FOR RECYCLED PRODUCTS, SUSTAINABLE PRACTICES

41.7.1. To the extent practicable and economically feasible, Contractor agrees to Provide a competitive preference for recycled products to be used in Contractor's performance of the Services pursuant to U.S. Environmental Protection Agency Guidelines appearing at 40 CFR Parts 247-253, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962.

41.7.1.A. Contractor should use both sides of paper sheets for copying and printing, where practicable.

41.7.1.B. In performing the Services, Contractor shall make all appropriate efforts to foster the use of fly ash (40 CFR Part 249).

41.8. FEDERAL LOBBYING RESTRICTIONS

41.8.1. Contractor certifies that it has not and shall not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency or any member of Congress in connection with obtaining any federal contract, grant or any other award subject to the requirements of 31 U.S.C. §1352. Each and every Subcontractor at all tiers shall certify to the contractor at the next tier above that such Subcontractor will not and has not used federal appropriated funds for such purpose. Contractor and all Subcontractors at all tiers shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on Contractor's or such Subcontractor's behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. §1352. Contractor shall require that such disclosures shall be forwarded from tier to tier up to Authority.

41.8.2. In addition, if Contractor has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, Contractor must disclose all such activities. In such a case, Contractor

shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities." Contractor must provide copies of all disclosure forms to Authority.

41.8.3. Contractor and Subcontractors shall file a disclosure form at the end of each calendar quarter in which there has occurred any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

1. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or
2. A change in the person(s) influencing or attempting to influence this federally funded Agreement; or
3. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

41.9. ANTI-KICKBACK REQUIREMENTS

41.9.1. Authority and Contractors are required to comply with the Copeland "Anti-Kickback" Act, 18 USC § 874 and 40 USC § 276(c), as supplemented in U.S. Department of Labor regulations at 29 CFR Part 3. Under State and federal law, it is a violation for Authority employees, contractors or subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a contract or the purchase of goods or services.

41.9.2. "Kick-Back" as defined by Federal Acquisition Regulations means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided directly or indirectly to any prime contractor, prime contractor employee, subcontractor or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

41.10. REQUIREMENTS OF AMERICANS WITH DISABILITIES ACT

41.10.1. Contractor is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

1. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37.

2. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27.
3. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local federal government Services," 28 CFR Part 35.
4. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36.
5. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19.
6. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630.
7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F.
8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.
9. Any implementing requirements that the FTA may issue.

41.11. CONSERVATION

Contractor shall recognize 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 USC Section 6321 et seq.).

41.12. ENVIRONMENTAL STANDARDS

Contractor agrees to comply with all applicable standards, orders or requirements as follows:

41.12.1. Environmental Protection

- 41.12.1.A. Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, et seq., in accordance with Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National

Environmental Policy Act of 1969, as amended, 40 CFR Part 15, et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

41.12.1.B. Contractor shall not use any facility in the performance of this Agreement that is listed on the EPA List of Violating Facilities, unless and until the EPA eliminates said name of such facility from said listing. Contractor shall promptly notify Authority of the receipt of any communication from the Director, Office of Federal Activities, EPA (or any successor agency), indicating that a facility to be used by Contractor is under consideration for listing on the EPA List of Violating Facilities. Contractor shall also report violations to Authority, to the FTA, and to the EPA Assistant Administrator for Enforcement.

41.12.1.C. Contractor shall provide Authority with the name, address and telephone number of any proposed disposal site. Contractor shall obtain Authority's written approval before using any disposal site. Such approval shall not relieve Contractor of its responsibilities under this Agreement and the law to secure a licensed, safe and secure disposal site.

41.12.2. Clean Air. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401, et seq., all applicable standards of the State of California and all clarifications, mitigation measures, and any other requirements approved by Authority in accordance with State and federal laws.

41.12.2.A. Contractor shall comply with all rules, regulations, and ordinances of the South Coast Air Quality management District ("SCAQMD") and statutes of the State that apply to any Services performed pursuant to this Agreement, including any air quality rules, regulations, ordinances and statutes specified in Section 11017 of the California Government Code. Contractor, Subcontractors and all suppliers shall submit evidence to Authority that the governing air criteria are being met; such evidence will be retained by Authority.

41.12.2.B. In the absence of applicable air quality rules, regulations, ordinances or statutes governing solvents, including but not limited to the solvent portions of paints, thinners, curing compounds and liquid asphalt used on this Agreement, Contractor shall comply with the applicable requirements of SCAQMD. Containers of paints, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with said requirements.

41.12.2.C. Contractor shall comply with California State law regarding pollution controls in operating or purchasing vehicles for use under this Agreement.

41.12.2.D. Material to be disposed of shall not be burned, unless otherwise allowed pursuant to the laws referenced herein.

41.12.2.E. Contractor agrees to report each violation to Authority and understands and agrees that Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

41.12.3. Clean Water. Contractor agrees as follows:

41.12.3.A. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251, et seq., all applicable water standards of the State of California; and all clarifications, mitigation measures, and any other requirements approved by Authority in accordance with State and federal laws.

41.12.3.B. Contractor agrees to report any violation of these requirements resulting from any Project implementation activity to Authority and the appropriate U.S. EPA Regional Office.

41.12.4. Energy Conservation.

Contractor shall comply with all mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

41.12.5. Material Storage

In compliance with all applicable federal, State or local laws, Contractor shall take all necessary precautions and steps to store flammable or combustible liquids, gases or other Material and all hazardous chemicals in a safe manner.

41.12.6. Use of Public Lands

Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the federal, State or local officials having jurisdiction thereof, or any land from a historic site of national, State, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 USC § 303.

41.12.7. Historic Preservation

41.12.7.A. Contractor shall assist the federal government in complying with Section 106 of the National Historic Preservation Act, 16 USC § 470f, involving historic and archaeological preservation and shall consult with the California State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Services, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," at 36 CFR Part 800. Contractor shall notify FTA of any properties so affected.

41.12.7.B. All things of historical, archaeological, paleontological or scientific interest encountered by Contractor during Contractor's performance of the Services shall be reported immediately to Authority. Construction in the vicinity of any discovery shall be halted in order to preserve and protect such discovery until its significance can be determined by Authority. Authority will issue instructions to Contractor with respect to the disposition of any discovery.

41.12.8. Mitigation of Adverse Environmental Effects

Contractor agrees that if performance of the Services should cause adverse environmental effects, Contractor will take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622. Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on any properties as described in Section 41.12.7.

41.13. PRIVACY

41.13.1. Should Contractor, any of its Subcontractors, or any employee of either of them administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering such system of records.

41.13.2. For purposes of the Privacy Act, when this Agreement involves the operation of a system of records on individuals to accomplish a government function, Authority, Contractor, any Subcontractor, any third party contractor, and their respective employees involved in operating such system of records are considered to be government employees with respect to such government function. The requirements of the Privacy Act, including any civil and criminal penalties for violations of the Privacy Act, apply to those individuals described in this Section 41.13.2 and any applicable regulation. Any failure by Contractor or any Subcontractor to comply with the applicable terms of the Privacy Act or this Section 41.13.2

will constitute a breach of this Agreement and Authority may seek any and all remedies set forth herein.

41.13.3. Contractor agrees to include a clause substantially similar to this Section 41.13 in all subcontracts awarded pursuant to this Agreement that require the design, development, or operation of a system of records on individuals subject to the Privacy Act.

41.14. CHANGES IN GOVERNMENTAL REGULATIONS

41.14.1. In the event any local, State or Federal law or regulation affecting Contractor's performance of the Services is enacted or amended before the Start Date of Services that (1) make any such standards more stringent or (2) make compliance more costly, Contractor shall notify Authority in writing of such changes to applicable laws or regulations and the effects of such changes on the cost of providing the Services promptly after Contractor first becomes aware of such new or amended laws or regulations. Authority will determine whether it will reimburse Contractor for any expenses relating to such new or amended laws or regulations. Contractor shall be deemed to have had notice of any Federal law or regulation announced or enacted as of the Effective Date, even though such law or regulation may not have taken effect or become operative until some date after the Effective Date.

41.14.2. If Contractor fails to promptly notify Authority when Contractor becomes aware of any changed requirements as described in this Section 41.14, Contractor shall be deemed to have waived all rights under this Section 41.14. In the event any governmental requirements are removed, relaxed or changed in any way after the Effective Date so as to make Contractor's performance less expensive, or less difficult, then Authority shall have the option either (1) to require Contractor to perform pursuant to the more rigorous requirements or (2) to receive a reduction in the cost of Services for all savings in Direct Costs which Contractor may realize by reason of such change, including such deductions for overhead and profit made so as to reflect actual savings realized by Contractor. Authority shall give Contractor notice of Authority's determination, and anticipated savings.

41.15. CIVIL RIGHTS REQUIREMENTS

The following civil rights requirements apply to this Agreement:

41.15.1. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and federal transit law at 49 U.S.C. §5332, Contractor agrees that it will not

discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and any other implementing requirements FTA may issue.

41.15.2. Equal Employment Opportunity:

41.15.2.A. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, Contractor agrees to comply with all applicable equal opportunity requirements of the U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR Parts 60 et seq. (which implement 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 activities undertaken in the course of this Agreement. 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, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay; other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

41.15.2.B. Age. In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and federal transit law at 49 U.S.C. §5332, Contractor agrees to refrain from discrimination against present and prospective employees for reasons of age. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

41.15.2.C. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, Contractor agrees that it will comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

41.15.2.D. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, Authority shall impose such contract sanctions as it or the FTA may

determine to be appropriate, including, but not limited to (1) withholding of payments to Contractor under this Agreement until Contractor complies; and/or (2) cancellation, termination or suspension of this Agreement, in whole or in part.

41.15.3. Incorporation of Provisions. Contractor agrees to include and require these requirements set forth in this Section 41.15 in every subcontract financed at any time in whole or in part with Federal funds.

41.16. INTEREST OF MEMBERS OF, OR DELEGATES TO, CONGRESS

No member of, or delegate to, the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

41.17. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, Contractor agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

41.18. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to any Grant Agreement to which Contractor's performance of the Services may be subject. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligation or liability to any party, including a subrecipient or third party Contractor.

41.19. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

41.19.1. Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to Contractor's performance of the Services. Accordingly, by signing this Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement Contractor has made, now makes, or may make pertaining to any applicable Grant Agreement, cooperative agreement, contract or project. In addition to other penalties that may be applicable, Contractor acknowledges that if it makes 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 amended, on Contractor, to the extent the Federal Government deems appropriate.

41.19.2. Contractor also acknowledges that it if makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on Contractor the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

41.20. PROMPT PAYMENT TO SUBCONTRACTORS

41.20.1. Contractor agrees to make prompt payment to all Subcontractors for satisfactory Services performed. For purposes of this Agreement “prompt payment” shall mean payment of all invoices substantiated to Contractor’s requirements no later than ten (10) working days from Contractor’s receipt of payment from Authority.

41.20.2. Should Contractor retain partial payment of any Subcontractor’s invoice to insure performance or for any other reason, Contractor agrees to make payment of such retainage within 15 (fifteen) working days of satisfactory completion of the Services or other obligation.

41.20.3. Failure of Contractor to make prompt payment as defined in this Section 41.20 or to delay payment without prior written consent of Authority shall constitute noncompliance with this Agreement. If Contractor fails to render prompt payment to any Subcontractor, Authority may withhold payment of all or part of any Contractor invoice until Contractor makes payment to such Subcontractor, or may terminate this Agreement in accordance with Article 9.

41.21. BUY AMERICA REQUIREMENTS

41.21.1. Funds for the performance of work pursuant to this Agreement are to be provided from FTA grant funds obligated after January 6, 1983. Therefore, Contractor must comply with Section 165 of the Surface Transportation Assistance Act of 1982, Pub. L. 97-424 (Buy America Provision) and 49 CFR Part 661. Among other things, steel and manufactured products used in Contractor’s performance of the Services must be produced in the United States. Contractor is advised to review the specific Buy America requirements contained in the regulations at 49 CFR Part 661.

41.21.2. Whether or not a Contractor certifies that it will comply with the applicable requirement, Contractor is bound by its original certification and is not permitted at any point to change its certification during the term of this Agreement. If Contractor certifies that it will comply with the applicable Buy America requirements, it may not change its certification at

any point and is not eligible for any waiver of those requirements other than any waivers granted by FTA prior to the execution of this Agreement pursuant to 49 CFR Part 661.13(c)).

41.22. FLY AMERICA

The Federal government shall not participate in the cost of international air transportation of any persons involved in or property acquired in connection with Contractor's performance of the Services unless such air transportation is provided by U.S. flag air carriers, to the extent service by these carriers is available, and is required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC Section 40018, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions", 4 CFR Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen LEXIS 2116, March 31, 1981.

41.23. CARGO PREFERENCE

Pursuant to 46 CFR Part 381, Contractor agrees:

- 41.23.1.** To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.
- 41.23.2.** To furnish within twenty (20) calendar days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, commercial ocean bill of lading in English for each shipment of cargo described in Section 41.23.1 above to Authority and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, SW, Washington, D.C., 20590, marked with appropriate identification of the project.
- 41.23.3.** To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Agreement.
- 41.23.4.** Contractor must have properly executed and submitted to Authority Form B-15, "Cargo Preference Certificate".

41.24. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Contractor agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§327-333) and implementing U.S. DOL regulations at 29 CFR Part 5 and 29 CFR Part 1926.

- 41.24.1. Overtime Requirements.** Neither Contractor nor any Subcontractor contracting for any part of the Services which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such Services to work in excess of 40 hours in such work week unless such laborer, mechanic, watchman or guard receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work week.
- 41.24.2. Violation; Liability for Unpaid Wages; Statutory Penalties.** In the event of any violation of this Section 41.24, Contractor and any Subcontractor responsible for any such violation shall be liable for any unpaid wages. In addition, Contractor and such Subcontractor shall be liable to the United States for statutory penalties. Such statutory penalties shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this Section 41.24, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by this Section 41.24.
- 41.24.3. Withholding for Unpaid Wages on Statutory Penalties.** Authority shall upon its own action or upon written request of an Authorized Representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of Services performed by Contractor or any Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contractor subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or Subcontractor for unpaid wages and statutory penalties as provided in Section 41.24.2 above.
- 41.24.4. Safety.** No laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his or her health or safety.
- 41.24.5. Subcontracts.** Contractor shall insert in any subcontracts the clauses set forth in Sections 1 through 5 of this Section 41.24 in addition to a clause requiring all Subcontractors to include these clauses in any contracts with lower tier subcontractors. Contractor shall be responsible for compliance

by any Subcontractor or lower tier subcontractor with the clauses set forth in this Section 41.24.

41.25. COORDINATION WITH CALIFORNIA LAW

When a conflict exists between California law and Federal law, the law establishing the higher standard applies. Contractor and any Subcontractors shall insert this clause in any lower tier contract.

41.26. SEISMIC SAFETY

Contractor shall comply with all applicable regulations of U.S. DOT relating to seismic safety at 49 CFR Part 41 and any implementing guidance FTA may issue.

42. WAIVER/INVALIDITY

42.1. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision, or of any other breach of the provision of this Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

42.2. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

43. FORCE MAJEURE

Each party shall be excused from performance of any of its obligations to the other hereunder, where such nonperformance is occasioned by any event beyond the nonperforming party's control which shall include without limitation, any order, rule or regulation of any federal, state, or local government body, agent, or instrumentality, acts of God or the public enemy, wars, civil disturbances, fires, floods, earthquakes that disrupt Metrolink service, epidemics, quarantine restrictions, freight embargoes, Work Stoppage or accident; provided, however, that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy, or remove such event in the shortest practical time. Contractor shall use its best efforts to undertake and complete the repair, restoration, or replacement of any property which is necessary for the provision of Services in accordance with established train schedules and shall resume normal operations and performance of its other obligations hereunder as soon as reasonably possible.

44. GOVERNING LAW

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California. By entering into this Agreement, Contractor consents and submits to the jurisdiction of the Courts of the State of California over any action at law, suit in equity, and/or other proceeding that may arise out of this Agreement.

45. ENTIRE AGREEMENT

This Agreement, and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire agreement between Authority and Contractor and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written.

46. MODIFICATIONS TO AGREEMENT

Unless specified otherwise in this Agreement, this Agreement may only be modified by written mutual consent evidenced by signatures of representatives of Authority and Contractor duly authorized to enter into and modify this Agreement. In order to be effective, amendments may require prior approval by Authority's Board of Directors, and in all instances require prior signature of a duly authorized representative of Authority.

47. PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement and its Appendices, (2) provisions of RFP NO. MS214-09, and (3) Contractor's proposal dated May 9, 2008, except that the revision and supplement to Contractor's Cost Proposal dated August 12, 2008 shall take precedence over the Cost Proposals dated May 9, 2008, June 19, 2008, July 18, 2008, and July 28, 2008.

48. PERFORMANCE BOND

Contractor shall provide annually a Performance Bond in an amount of Five Million Dollars (\$5,000,000) The Performance Bond shall be supplied on forms acceptable to SCRRA and shall be issued by admitted Sureties satisfactory to SCRRA and authorized to issue such bonds in the State of California. Should any Surety at any time be unsatisfactory to SCRRA, notice will be given the Contractor to that effect. No further payments shall be deemed due or will be made under the Agreement until a new Surety shall qualify and be accepted by SCRRA. Changes in the Services or extensions of

time made pursuant to the Contract shall in no way relieve the Contractor or Surety from its obligations. Notice of such changes or extensions shall be waived by the Surety. The Performance Bond for each Fiscal Year shall be supplied to SCRRA within one (1) month after approval of the Approved Budget for that Fiscal Year. At any time during the term of this Agreement or any renewal thereof, SCRRA may in its sole discretion advise Contractor that a performance bond for the next Fiscal Year is not required.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives on the dates shown below, and effective on the date first hereinabove written.

Contractor
VEOLIA TRANSPORTATION
MAINTENANCE AND INFRASTRUCTURE,
INC.

SOUTHERN CALIFORNIA
REGIONAL RAIL AUTHORITY

Name
Title

David Solow
Chief Executive Officer

Date

Name
Title

Date

Tax I.D. No. _____

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.
County Counsel, County of Los Angeles
SCRRA General Counsel

Deputy