

## AMENDMENT NO. 5

Southern California Regional Rail Authority

## TO CONTRACT NO. MS214-09

## BETWEEN

## SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

## AND VEOLIA TRANSPORTATION MAINTENANCE AND INFRASTRUCTURE, INC.

## FOR TRACK, STRUCTURES AND RIGHT-OF-WAY MAINTENANCE SERVICES

This Contract Amendment, effective January 1, 2011 is entered into by and between the SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (hereinafter "Authority") and Veolia Transportation Maintenance and Infrastructure (hereinafter "Contractor").

## RECITALS

### WHEREAS:

- I. Authority and Contractor entered into an agreement for track, structures and right-of-of way maintenance services on October 16, 2008.
- II. Effective July 28, 2009, the Authority amended the contract under Amendment No. 1 to revise Article 6, Payment and Invoicing, to increase contract authority in an amount not-to-exceed \$17,772,596 for work to be performed during July 1, 2009 through June 30, 2010 as funded in the FY 2009/10 Operating and Capital Budgets.
- III. Effective December 16, 2009, the Authority amended the contract under Amendment No. 2 to revise Article 6, Payment and Invoicing, Paragraph 6.1, Compensation, to increase contract authority for FY 2009/10 in an amount not-to-exceed \$5,556,014 as approved by the Board at the December 2009 meeting.
- IV. Effective July 1, 2010, the Authority amended the contract under Amendment No. 3 to increase the FY 2010/11 contract funding authority by \$18,423,149 as approved at the June 25, 2010 Authority Board meeting.
- V. Effective October 1, 2010, the Authority amended the contract under Amendment No. 4 to revise Article 2.0, Scope of Services, Section 2.2.1 Inspections, Paragraph 2.2.1A, Virtual Inspections, to reduce the number of weekly inspections without increase in contract authority.
- VI. In accordance with Articles 17 and 46 of the Contract, and as approved at the October 22, 2010 Authority Board meeting, the Authority hereby amends the

Contract under Amendment No. 5, effective January 1, 2011, to delete the Material Management scope of services and related positions and requirements of the Contract and to otherwise amend the Contract, as follows:

NOW, THEREFORE, Authority and Contractor hereby amend the Contract as follows:

- I. Article 1, Definitions, Section 1.43, Key Staff is deleted in its entirety to remove the position of Material Management Supervisor and replaced with the following:

**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, Safety Manager, Training Manager, Railroad Bridge Supervisor, Office Engineer, and Project Engineer in connection with Contractor's performance of the Services.

- II. Article 2, Scope of Services, Section 2.2.6, Provision of Material and Supplies is deleted in its entirety and replaced with the following:

**2.2.6 Provision of Materials and Supplies.** Authority will procure materials and supplies directly and furnish them to Contractor. The Authority acknowledges that if materials and supplies are untimely delivered to Contractor or if such materials and supplies are not otherwise available because of defects, deficiencies or poor quality, the Contractor's Services and any warranties and other obligations of the Contractor pursuant to the Contract may be adversely affected, and the costs of performing the Services and any necessary remedial action or replacement of the Services may increase and that the Authority shall be responsible for any such increased costs if Contractor can justify such costs. The Authority shall advise the Contractor of the applicable policies and procedures it intends to utilize in the procurement, management and inventory of materials and supplies, the inventory control system it expects to use, applicable material specifications, and any changes to the foregoing.

- III. **Article 2, Section 2.2.10, Material Management** is deleted in its entirety and replaced with the following:

- 2.2.10.A General. Authority shall be responsible for and shall manage the planning, purchasing, storage, distribution and control of all materials required by Contractor to perform the Services under this Agreement and, to support Authority's capital programs.
- 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; provided that Contractor shall first receive written approval from the Authority before Contractor procures or make such materials or supplies available; provided further that in the event that Contractor does, in fact, procure materials or supplies or make any separately maintained materials or supplies available for the provision of Services under this Agreement, Authority shall reimburse Contractor for the Direct Costs of any such materials or supplies which will be subject to a material procurement overhead as listed in Article 6.2.1.A.6. All such materials or supplies purchased by Contractor pursuant to this Section for the purpose of providing Services under this Agreement shall become the property of Authority upon the reimbursement of applicable costs by the Authority. An emergency circumstance shall not arise as a result of the Authority's failure to timely procure materials and supplies necessary for the Contractor to timely perform the Services.
- 2.2.10.C Purchasing Decisions. In the event Contractor is requested by the Authority to provide or procure any materials or supplies, 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. 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.

IV. Article 3, Quality Control, Section 3.4 Quality Control, is deleted in its entirety and replaced as follows:

**3.4.1 Materials.** Prior to using the materials delivered by Authority in performance of the Services, Contractor will conduct a visual inspection of the materials to confirm that they are appropriate for use in the Services; and that such materials provided by Authority are 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 for which the Authority has the responsibility of purchasing compliant materials. For materials provided by Contractor as required under Section 2.2.6, Contractor will be responsible to confirm compliance. 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:

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

**3.4.2.B.** 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.B.1** 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.C.** 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.D.** 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.

V. Article 3, Subsection 3.5.1 Warranty of Services, is deleted in its entirety and replaced as follows:

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 as delivered by the Authority will be inspected to determine that they are fit for the purposes for which such parts and materials are intended and shall satisfy Contractor's inspection and verification requirements in Section 3.4.1. Contractor shall employ a sufficient number of skilled and Qualified employees to perform the Services.

VI. Article 5.2, Preparation of Proposed Budget, Subsection 5.2.1 is deleted in its entirety and replaced as follows:

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 subcontracted services and materials to be purchased by the Authority
- 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

VII. Article 5, Section 5.4, Approved Budget, is deleted in its entirety and shall be replaced as follows:

#### **5.4 APPROVED BUDGET**

The final Approved Budget shall include (1) an agreed-upon Ordinary Maintenance budget; (2) amounts for (a) Direct Costs for material quantity requirements 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.

VIII. Article 6, Payment and Invoicing, Subsection 6.2.4.E is deleted in its entirety and shall be replaced as follows:

**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) reductions in property damage; (15) adherence to rules or instructions; and (16) 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.

IX. Article 11 Authority and Contractor's Representatives, Section 11.2, Contractor's Key Staff, is deleted in its entirety and replaced with the following

**11.2 CONTRACTOR'S KEY STAFF**

The following are Contractor's Key Staff:

<u>Name</u>	<u>Role</u>
Shane Edwards	Maintenance Contract Manager
Ken Oneal	Asst. Maintenance Contract Manager
Dean Stuart	Railroad Bridge Supervisor
Thomas Kiepe	Project Engineer
Jim Clouse	Training Manager
Van Chuoy	Office Engineer
Vacant	Safety Manager
Robert Takushi	Project Engineer

X. Article 23 Liquidated Damages, Section 23.1.3 is deleted in its entirety and shall be replaced as follows:

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. Authority may also consider, as a mitigating factor, whether untimely delivery and/or defective materials procured by the Authority contributed to any delay."



XI. Conforming modifications to the Contract Exhibits, Schedules and Appendices shall be made consistent with the purpose of this Amendment No. 5. As appropriate, revised Exhibits, Schedules and Appendices shall be substituted within sixty (60) days of the effective date of this Amendment.

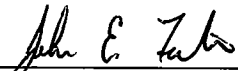
XIII. Except as hereby amended by this Amendment No. 5, the Contract, as previously amended by Amendment Nos. 1 – 4, remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Contract Amendment to be executed as of the day first above written.


SOUTHERN CALIFORNIA  
REGIONAL RAIL AUTHORITY

VEOLIA TRANSPORTATION  
MAINTENANCE AND  
INFRASTRUCTURE, INC.

By:

  
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John E. Fenton  
Chief Executive Officer

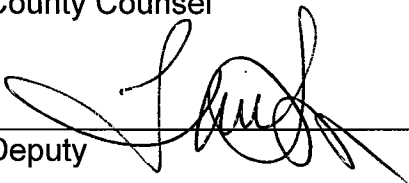
By:

  
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**APPROVED AS TO FORM:**

ANDREA SHERIDAN ORDIN  
County Counsel

Deputy

  
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