

Agreement Number
Registration Number

- This Agreement is entered into between the Agency and the Owner named below:
 AGENCY'S NAME
City of Fresno
 OWNER'S NAME
Pacific Gas and Electric Company
- The term of this Agreement is: **September 1, 2018** through **December 31, 2020**
 or upon execution the commencement date shall be such later date that this Agreement has been fully executed by both Parties
- The maximum amount of this Agreement is: **\$415,000.00 for Design & Construction Oversight Only**
Four Hundred Fifteen Thousand Dollars and No Cents
- The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Utility Agreement	16 pages
Exhibit B – General Terms and Conditions	4 pages
Exhibit C – Supplemental Federal and City Terms and Conditions	10 pages
Exhibit C-1 – Form of Buy America Certificate of Compliance	1 page
Exhibit D – Terms Applicable to Subcontractors (PG&E Flowdown Terms)	11 pages
Exhibit E – Rates	3 pages
Exhibit F – Form of Notice to Owner	2 pages
Exhibit G – Form of Invoice	4 pages
Exhibit H – Cost Estimate	1 page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.



OWNER		
OWNER'S NAME (if other than an individual, state whether a corporation, partnership, etc.) Pacific Gas and Electric Company		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 77 Beale St, San Francisco, CA 94105		
CITY OF FRESNO		
AGENCY NAME City of Fresno		
BY (Authorized Signature) 	DATE SIGNED (Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS 2600 Fresno Street, Fresno, CA 93721		

EXHIBIT A:
UTILITY AGREEMENT

1. SCOPE OF AGREEMENT, OTHER AGREEMENTS, AND RELATIONSHIP OF PARTIES

1.1 Parties. The CITY OF FRESNO, herein called "City" (which term includes its officers, agents, contractors, subcontractors, successors and assigns and other public agencies performing projects in connection with the HSR Project) proposes to design and construct facilities for the development and implementation of inter-city high-speed rail service on behalf of the California High-Speed Rail Authority (the HSR Project). This agreement, herein referred to as "Agreement", of which this Exhibit A Utility Agreement and the other exhibits hereto are a part, is for the design and construction phase of the HSR Project along G Street from Santa Clara Street in the City of Fresno to the North to East California Street to the South, herein referred to as "CFP 01". The project alignment will extend approximately half a mile in length consisting of embankments, grade separations and aerial structures. PACIFIC GAS AND ELECTRIC COMPANY, herein called "Owner", owns and maintains gas and electric transmission, distribution and service facilities, and telecommunications facilities, within the limits of CFP 01, some of which will require relocation to accommodate the HSR Project.

1.2 City Responsibility. The work to be performed hereunder by Owner, City and others has been requested by City to accommodate the HSR Project.

1.3 Related Agreements. This Agreement is entered into in recognition that Owner has entered into other agreements with the California High-Speed Rail Authority relating to the HSR Project. This section describes certain of those agreements.

(a) Agreement HSR13-52 ("Master Agreement"). This Agreement relates to particular work envisioned by Owner and the California High-Speed Rail Authority when they entered into the Master Agreement. Any capitalized terms used herein but not defined herein, and which are defined in the Master Agreement, will have the meaning as defined in the Master Agreement.

1.4 Owner Not Contractor. Owner is not a contractor as defined by the California Contractors State License Board, but is a contractor in that Owner is a party entering into this contract with the City of Fresno.

1.5 Parties' Representatives. Other than notices as described in Section 8.1(c) or Section 8.2, (a) Owner shall send all routine communications to City's Representative; and (b) Owner shall designate and inform City of one or more Owner representatives to receive routine communications. All such communications may be by email or other practical mode. The Parties reserve the right to assign, remove or reassign their respective representatives at their discretion.

2. DEFINITIONS

"Applicable Law" means all local, state, and federal laws, rules, regulations, ordinances, building code or other codes, statutes, or regulations, or lawful orders of Governmental Authorities that are relevant to proper and safe performance of the Work, as well as occupancy and operation of the Work, including but not limited to, all applicable FERC, NERC, CalISO, U.S. DOT, and CPUC regulations, rules, orders, decisions, and requirements.

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“Approved Material Suppliers” is defined in Exhibit D, Section D.9.

“Approved Subcontractors” means Subcontractors approved by Owner in writing specifically indicating that the entity is an Approved Subcontractor under this Agreement.

“As-Built” means a drawing clearly showing all installed facilities (for trench work, on a 3D basis that shows the x, y and z axis locations), prepared upon completion of Work.

“City” is defined in Section 1.1.

“City’s Contractor” means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the City for performance of work on the HSR Project and for the performance of Facility Work, as defined herein.

“City’s Engineer” means City’s field representative to whom Owner and City make known decisions, instructions and interpretations. Each Notice to Owner may have a different City’s Engineer. With the exception of the types of notices described in Section 8.2, notices given the City’s Engineer shall be deemed notices given to City.

“Betterment” means the difference in cost between the intended Relocation of Owner’s Facility and a Relocation which would provide Owner with equivalent substitute Facilities for those Facilities requiring Relocation to accommodate the HSR Project. As employed herein, Betterment does not include those differences in cost caused by changes in manufacturing standards, availability of materials, or regulatory requirement.

“Cal-ISO” means the California Independent System Operator, or its regulatory successor, as applicable.

“CPUC” means the California Public Utilities Commission, or its regulatory successor, as applicable.

“Facility” or “Facilities” means any Utility owned and operated by Owner.

“FRA” means the Federal Railroad Administration, or any successor agency.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the gas and electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

“Governmental City” means any federal, state or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, City, body or entity, other than City.

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“Governmental Authorization” means any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration, or ruling, required by or with any Governmental City in order to design and construct the HSR Project (including the related Owner projects which are required to support the HSR Project), or operate the HSR Project (including such Owner projects) until final acceptance, including any supplemental documents or amendments thereto.

“Hazardous Materials” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.

“HSR Project” means the development and implementation of intercity high-speed rail service throughout the State of California as defined under current provisions of Sections 2704 *et seq.* of the Streets and Highways Code and Sections 185030 *et seq.* of the Public Utilities Code.

“Legal Requirement(s)” means any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, directive, guideline, criteria, standard, policy requirement or other governmental restriction or any similar form of decision or determination by, or any interpretation or administration of any of the foregoing by, any Governmental City, which is applicable to the Work or the HSR Project, whether now or hereafter in effect.

“NERC” means North American Electric Reliability Corporation.

“Notice to Owner” means a notice in the form of Exhibit F.

“Owner” is defined in Section 1.1.

“Party” means City or Owner, or both, as the context requires.

“PG&E Flowdown Terms” is defined in Section 3.4(c).

“Private Right-of-Way of Owner” means a property right held by Owner in the form of either a recorded or fully executed deed in the usual form or other valid instrument recorded or fully executed and conveying a permanent property right for the Facility within the HSR Project right-of-way that is subject to a recorded Joint Use Agreement (JUA) or Consent To Common Use Agreement (CCUA).

“Relocation” means removal, relocation, abandonment, protection or any other arrangement of Owner’s Facility as ordered and approved by City to accommodate the HSR Project.

“Subcontractor” means a party entering into a contractual agreement with City, City’s Contractor or another Subcontractor for any portion of the Work. For the avoidance of doubt, an City’s Contractor is also a Subcontractor.

“System Tie-In Work” is defined in Section 3.1.

“Utility” means Owner’s electric and gas Facilities, and communications associated therewith (whether existing or acquired hereby). The necessary appurtenances to each Facility shall be considered

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part of such Utility. Without limitation, any service line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service line. However, when used in the context of the removal, relocation and/or protection of Facilities to accommodate the HSR Project, the term “Utility” or “utility” specifically excludes (a) traffic signals, street lights, and crossing equipment, as well as any electrical conduits and feeds providing service to such Facilities, and (b) cellular telecommunications towers and related facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, and/or crossing equipment shall be deemed to provide service to such Facilities if they do not carry electricity that will serve any other type of facilities.

“Work” means all services, labor, materials and other efforts to be provided and performed by City hereunder, including the following general categories: scheduling, utility relocation, demolition, permitting, survey, geotechnical, design, environmental mitigation, construction, quality control, and quality assurance for design and construction, community relations, quality inspection and testing, construction safety and security program, system testing, preparation of Computer-Aided Design and drafting As-Built drawings, coordination with jurisdictional authorities (governments, public and private entities), utility companies, railroad companies, and local communities, and other efforts necessary or appropriate to complete the design, procurement and construction required in conjunction with the HSR Project.

3. RESPONSIBILITIES OF CITY

3.1 Design, Procurement, Construction. City shall have responsibility for the design, procurement and construction of Facilities specified within each Notice to Owner, as further detailed herein. City agrees to cause the Work to be performed by City’s contractors, employed by written contract to perform work of this type and to provide and furnish all necessary labor, materials, tools, and equipment required therefor, and to prosecute said Work diligently to completion, including connecting the Facilities installed under this Agreement to Owner’s energized and pressurized operating facilities (“System Tie-In Work”).

3.2 Payment for HSR Project.

(a) Liability for the work is at 100% City expense pursuant to the Master Agreement by and between the California High-Speed Rail Authority and Pacific Gas and Electric Company dated April 14, 2014. City is responsible for payment of the actual costs, less any credits, of all work to complete the Relocation of Owner’s Facilities necessitated by the HSR Project. Unless this Agreement expressly provides that a service of Owner is to be “at Owner’s cost” (or the like), City will compensate Owner for all Owner’s work provided hereunder in accordance with Section 6.

(b) The parties acknowledge that the initial Agreement amount of \$415,000 may be insufficient for Owner to complete its responsibilities hereunder – the initial estimate for which is \$415,000. At such time as Owner expenditures reach approximately 50% of the then-current Agreement amount, Owner will provide notice to City of the expenditures to-date. City understands and agrees that (A) estimates of expenditures are inherently imprecise, often depending on third-party input, which can be delayed, and on other unknowns, (B) Owner may

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cease work if City does not increase the Agreement amount by amending this Agreement as contemplated by Section 6.3(a) by the time Owner reaches 90% of the Agreement amount (except when Owner believes that the Agreement amount will be sufficient to complete the work), (C) if Owner ceases work under this Section, Owner may not provide a complete work product to City, and the amount necessary to complete the work may increase due to the work stoppage, and (D) while Owner understands that City may not expend more than the then-current Agreement amount, Owner cannot guarantee that its costs will not exceed the Agreement amount.

3.3 Standards. City shall perform the Work or, to the extent City contracts with Subcontractors, shall cause such Subcontractors to perform the Work, generally using Good Utility Practice, and otherwise in compliance herewith. City's engineering, procurement and construction of Owner's Facilities shall comply with all requirements provided by, or made available by, Owner, to City or Subcontractors which pertain to engineering, procurement or construction of Owner's Facilities. For the avoidance of doubt, Owner will provide and make available such requirements in the same manner as Owner would to other entities constructing facilities to ultimately be owned by Owner, in some cases through access to information on Owner's website.

3.4 Subcontractors.

(a) *Selection*. Any Subcontractor performing Work shall have been approved in writing by Owner for the particular type of Work which will be performed by that Subcontractor. City shall only solicit installation bids from qualified Subcontractors who shall: (i) be licensed in California for the appropriate type of work (electrical, general, etc.) and (ii) employ workers properly certified for specific skills, required (plastic fusion, welding, etc.). Electric workers shall be properly qualified (Qualified Electrical Worker, Qualified Person, etc.) as defined in State of California High Voltage Safety Orders (Title 8, Chapter 4, Subchapter 5, Group 2).

(b) *Chain of Responsibility*. City shall be responsible for ensuring (i) that Subcontractors are informed of the applicable requirements of this Agreement, including without limitation the PG&E Flowdown Terms, and (ii) that Subcontractors in fact comply with applicable provisions of this Agreement. Owner shall have reasonable access during all phases of the Work for the purpose of inspection and monitoring to assure itself that the Work is being completed in accordance with the approved plans and Owner's standards and specifications.

(c) *Flowdown Terms*. Terms of this Agreement to include in City's agreements with Subcontractors for procurement, design and construction of Owner's Facilities are attached hereto as Exhibit D ("PG&E Flowdown Terms"); provided that in City's discretion, it may include in its subcontracts additional terms hereof (e.g., all or portions of Exhibit B and Exhibit C, provisions of this Section 3 that are not already included in the Flowdown Terms or particular provisions hereof that might apply only to a particular Subcontractor). The PG&E Flowdown Terms will apply to any physical on-site portion of the Work beyond supervision and management. City employees will not perform this work. All Parties agree to honor the City's Contractor's and Subcontractors' site safety rules to the same degree as is required of any site visitor.

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(d) *Persons Not to Bind Owner.* Neither City nor any Subcontractor, regardless of its being included on the Approved Subcontractors list, shall bind or purport to bind Owner.

(e) *Insurance.* The City's Contractor shall procure such insurance coverages with commercially reasonable insurance limits as are required by City, and shall name Owner as an additional insured.

3.5 Materials. The Parties acknowledge that Exhibit C includes the "Buy America" requirements applicable in the event Owner were to procure materials to be incorporated in the HSR Project in performance of Owner's obligations hereunder. It is the intent of the Parties that under this Agreement Owner will not be procuring or providing any materials for incorporation in the HSR Project. If City wishes Owner to procure or provide any materials under this Agreement, the Parties will coordinate with the Federal Rail Administration as to which components proposed in the designs would require Buy America compliance, prior to acquisition by Owner.

3.6 Notices to Owner.

(a) The Work will be described by City in Notices to Owner (each, an "NTO"). City may issue multiple NTOs per location to cover coordination and design oversight; and then design approval, subcontractor approval and construction oversight. The form of Notice To Owner, Exhibit F, may be amended, changed or altered by mutual consent of the parties in writing without requiring an amendment to this Agreement.

(b) All Work shall be performed substantially in accordance with City's approved relocation plan, a copy of which will be on file in City's office located at 2600 Fresno Street, Room 4036, Fresno, CA 93721. Any revision to a Notice to Owner, initiated by either City or Owner, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notice to Owner, approved by City and acknowledged by Owner, will constitute an approved revision of the Notice to Owner and is hereby made a part hereof. No work under said deviation shall commence prior to written execution by Owner of the Revised Notice to Owner.

3.7 Coordination With Others.

(a) *Permits.* Whenever feasible under Applicable Law, City or City's Contractor shall comply with all local agency and/or private utility permitting and requirements necessary to complete the Work including payment of all fees, furnishing all warranties and insurances, adherence to design, construction and safety standards, furnishing all mitigation measures and complying with all other required provisions. To the extent Applicable Law requires Owner to obtain a required Governmental Authorization (such as, potentially, notices to and authorizations from the CPUC under its General Order 131-D), City shall fund the acquisition of such Governmental Authorizations by Owner (including funding and preparing supporting applications and other documentation, in coordination with Owner for Owner's submittal) and cooperate with and assist Owner in its efforts to obtain them; Owner shall cooperate with City within reasonable timeframes to obtain such Governmental Authorizations. In advance of any specific Relocation, City shall consult with Owner in evaluating and determining what Governmental Authorization (including but not limited to from the CPUC), if any, may be required for the Relocation.

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(b) *Environmental Review.* CP01 is included within the Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) for the Merced to Fresno section of the HSR Project. The California High-Speed Rail Authority’s Board of Directors certified the Final EIR/EIS under the California Environmental Quality Act (CEQA) on May 3, 2012. The FRA issued a Record of Decision (ROD) under the National Environmental Policy Act (NEPA) on September 18, 2012. Wherever feasible under Applicable Law, unless otherwise expressly agreed in writing by the Parties, or unless Applicable Law requires Owner to obtain a required Governmental Authorization (see Section 3.7(a) above), City shall be responsible, at its sole cost and expense, (i) for compliance with all laws, rules, and regulations, including all environmental laws, rules, and regulations, applicable to any Relocation, (ii) to obtain, by the time required for performance of the applicable Work, all Governmental Authorizations or other agreements or approvals that may be necessary from Governmental Authorities or third parties for any Relocation; and (iii) to not proceed with the applicable Work until all Governmental Authorizations required by City, Owner or others have been obtained. City does not (I) waive City’s rights regarding the application of the Interstate Commerce Commission Termination Act of 1995 (ICCTA), including the defense that ICCTA preempts non-federal Governmental Authorizations, and application of the California Environmental Quality Act, to the HSR Project, or (II) create an implied agreement that CEQA and/or such environmental permitting requirements apply to the HSR Project. City shall ensure that the environmental effects of relocation, modification, or construction of any Facilities subject to this Agreement are included and analyzed in City’s environmental review, regardless of whether City or Owner will obtain any Governmental Authorizations associated with the Facility. Prior to commencement of any specific Relocation, City shall provide to Owner documentation showing that the Relocation and an analysis of its environmental effects has been included in the applicable CEQA/NEPA documentation.

(c) *Land Rights.* Prior to performing any Work on third parties’ property, City shall obtain sufficient rights to occupy the property and perform the Work.

3.8 Hold Points. City shall submit to Owner the following items *prior to* the time/event indicated in the second column, and shall obtain Owner’s written approval of the item before proceeding, such approval not to be unreasonably withheld. Each Party shall promptly respond to requests from the other Party for further information or details on any item under this Agreement. Specific review periods may be agreed to by the Parties in a separate schedule coordinated by the City’s Contractor.

<u>Item for Owner Approval</u>	<u>Submission and Approval of Owner Prior To:</u>
Notice to Owner	Pre-design Meeting
Pre-design Meeting / Site visit	Design Review / Approval
Draft agreements for land rights (except where the agreement is, in all material respects, in a form already agreed by Owner)	Construction
Design Review Approval/Materials Review (may include request for approval at less than 100% completion, with any such approval being as customarily provided for the lesser percentage of completion)	Construction (or further design, as applicable)
Cut Over Clearance Scheduled	Construction
Governmental Authorizations (if any)	Construction
Construction	Testing

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Proposed Outage Timing	Outage (and in time for Owner to provide notice to customers)
Testing/Acceptance	Tie-in
Red Line Drawings	Tie-in
As-Built Drawings	Project Close
Mapping	Project Close

3.9 Remedy of Deficiencies. At any time, should any phase of the engineering, equipment procurement, or construction of Owner's Facilities not meet the standards and specifications required hereby, City shall be obligated to remedy deficiencies in that portion of Owner's Facilities.

3.10 Project Timeline Chart(s). City or City's Contractor will develop a schedule to organize the Work, including responsibilities of Owner and all proposed outages. Any scheduling involving Owner shall be subject to Owner approval, which shall not be unreasonably withheld.

3.11 Turnover.

(a) Land Rights.

(i) Whenever Owner's affected Facilities will remain within the existing Private Right-of-Way of Owner, and these Facilities will fall within the right-of-way of the HSR Project under the jurisdiction of City, City and Owner shall jointly execute an agreement for common use of the subject area, which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner.

(ii) Whenever Owner's affected Facilities will be relocated from the existing Private Right-of-Way of Owner to a new location that falls outside such existing Private Right-of-Way of Owner, City shall convey or cause to be conveyed a new right-of-way for such relocated Facilities as will correspond to the existing Private Right-of-Way of Owner. For such Relocations, City shall issue, or cause to be issued, to Owner, without charge to Owner or credit to City, appropriate replacement rights in the new location mutually acceptable to both City and Owner for those rights previously held by Owner in its existing Private Right-of-Way. In discharge of City's obligations under this Paragraph, in the event that the new location falls within the right-of-way of the HSR Project under the jurisdiction of City, City and Owner shall jointly execute an agreement for joint use of said new area which agreement shall also confirm any prior rights held by Owner in said Private Right-of-Way of Owner. In consideration for these replacement rights being issued by City, Owner shall subsequently convey to City, or its nominee, within City's Right-of-Way, all of its corresponding right, title and interest within Owner's existing Private Right-of-Way so vacated.

(iii) If an existing Private Right-of-Way of Owner includes fee title, City shall acquire from Owner, for just compensation under State law, those property rights required by City for the HSR Project by separate transaction, leaving to Owner those remaining property rights appropriate for the placement and operation of Owner's Facilities in the Private Right-of-Way of Owner.

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(b) *Transfer of Title and Responsibility to Owner.* Title and ownership for the Facilities installed under this Agreement shall vest in Owner, and the Facilities will be deemed finally accepted by Owner and maintenance responsibilities therefor assumed by Owner, upon (i) completion of construction by City and inspection and acceptance by Owner and (ii) successful pressurization or energization of the distribution or transmission system making the distribution or transmission system operational.

(c) *Other Deliverables Upon and After Turnover.* At the time of transfer of title and ownership of the Facilities as described in Section 3.11(b), City shall have obtained sufficient land rights for Owner to operate and maintain the Facilities. Within 180 days after transfer of ownership of Facilities as contemplated by Section 3.11(b), City shall deliver to Owner the other deliverables described in this Agreement. Upon request, City will deliver to Owner a bill of sale for personal property or other indicia of title in the Work or portions thereof being vested in Owner. In the event City has not obtained sufficient replacement land rights for Owner's Facilities at the time of transfer of title and ownership as set forth in Sections 3.11(a) and (b) above, City shall hold Owner harmless for any and all claims that relate to or arise from the alleged insufficiency of Owner's right to occupy the property with Owner's Facilities.

(d) *Work Conveyed Free of Liens.* City warrants that all Work shall be conveyed by City to Owner free and clear of all liens, stop payment notices, claims, security interests or encumbrances in favor of City, its consultants and Subcontractors, suppliers, equipment vendors, and other persons and entities entitled to make a claim by reason of having provided design services, labor, materials or equipment relating to the Work.

(e) *Tagging.* On final walk-thru and before energization or pressurization, City shall tag the electrical distribution, electrical services and gas services with the letters "AIF" and the anticipated expiration date of the material warranty. Identification shall be by affixing an orange plastic tag to the electrical wire in each primary and secondary enclosure, to the wires in the electrical service panels and to the gas service risers.

(f) *Materials Warranties.* City shall assign all material warranties to Owner along with transfer of title. Materials incorporated into the Work shall benefit from the same length and type of warranty as would apply if Owner were purchasing such materials, and in any event shall have a minimum one-year duration. City shall notify Owner of the warranty period and other warranty terms for materials and all other Work. Guarantee and warranty periods shall commence on the date of transfer of title as described in Section 3.11(b).

(g) *Partial Acceptance.* In Owner's discretion upon City's request, Owner may accept portions of the Work which have been completed. City shall minimize future hot tie-ins and Work near energized or pressurized facilities.

3.12 Hazardous Materials. Upon discovery of Hazardous Material in connection with the Work, the Parties shall confer to explore all reasonable alternatives and agree on a course of action, and City shall immediately reschedule the Work to complete the Work in accordance with City's reasonable schedule and in compliance with Applicable Law concerning the disposition of Hazardous Material. City will pay, in its entirety, those costs for additional necessary effort to comply with Applicable Law

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concerning the disposition of Hazardous Material found as a consequence of the Work, unless such conditions are attributable to Owner's existing installation or operation. Each Party retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

4. RESPONSIBILITIES OF OWNER

4.1 Cal-ISO Approval. Owner will use commercially reasonable efforts to obtain Cal-ISO approval, as necessary, for work contemplated hereby, including without limitation, any necessary electric transmission clearances. Owner shall notify City when Cal-ISO approval has been obtained not later than five Business Days following the date that any applicable order or orders have become final and non-appealable.

4.2 Initiation and Engineering. Owner shall furnish to City any available as-built drawings as to existing facilities, where the Work will involve Relocation.

4.3 Approval of Plans, Materials Lists, Drawings, Construction, Etc.

(a) Owner shall be responsible for (i) providing pre-approval of various aspects of the Work and approving Subcontractors and materials suppliers as provided herein; (ii) approval of Relocation designs; (iii) monitoring System Tie-In by City or, at Owner's election with sufficient notice to City, performing the System Tie-In Work; (iv) notifying and coordinating with any licensees of Owner's Facilities with whom City does not have direct responsibility for relocation; and (v) notifying Owner's customers of outages and conveying to City any necessary schedule changes resulting from customer input. City agrees to a thorough and detailed inspection (100%) by Owner of any activity undertaken by City in the performance of the Work. City's contracts with its contractor(s) and subcontractors will provide for Owner's access to conduct the required inspections. City shall pay the cost of such work by Owner in accordance with Section 6.

(b) Owner shall respond to City's requests as to the items which require Owner approval hereunder prior to City proceeding, in accordance with Section 3.8.

(c) Owner shall upon execution and delivery of this Agreement promptly begin to compile lists of Approved Subcontractors and Approved Material Suppliers so that City has the necessary information by the time it is needed. If Owner does not have an Approved Material Supplier that can certify to Buy America compliance if required, Owner will coordinate with City to resolve the issue.

4.4 Documentation of Existing Land Rights. Owner shall provide evidence to support that the existing Facilities are lawfully maintained and documented in their present location, through either a recorded or fully executed deed or other land right, including prescriptive rights in their present location. If any land right is held by Owner within City's right-of-way for the HSR Project and City provides to Owner a replacement land right in connection with a Relocation, Owner will convey to City any land right within City's right-of-way that is no longer needed by Owner.

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5. PERFORMANCE OF WORK

5.1 Locate and Mark Services. Engineering services for locating, making of surveys, responding to requests to locate and field mark Owner's facilities, and supervision are to be furnished by Owner and approved by City.

5.2 Positive Locations. City assumes 100% of the liability for ordered positive locations and Owner hereby provides consent for City to conduct the positive locations. Owner retains the right to require reasonable controls and restrictions. Such controls and restrictions shall be promptly provided to City in writing. City understands Owner's controls and restrictions are in the interest of public safety and will immediately stop work for positive location affecting Owner's Facilities if Owner's representative deems City is not in compliance with the controls and conditions.

(a) When this work is performed by City or City's Contractor, Owner shall provide confirmation in the field of the identity and typical characteristics (including size, material, contents, pressure or capacity) of Owner's exposed utility Facility and related activities, including, but not limited to inspection services, in accordance with City's time schedule. Upon completion of the Work, City shall restore the work site to as good a condition as that found when the Work commenced.

(b) If Owner requests to conduct the positive location with its own staff, City will pay only the going contract rate in effect at the time. If, however, City requests Owner to conduct the positive location because of a lack of an ongoing contract or insufficient contractor staff, City will pay 100% of Owner's actual and necessary costs.

(c) The work to be performed under this section is limited to the work necessary to positively determine the horizontal and vertical location and/or apparent visual condition of Owner's utility facilities with a degree necessary to meet the City's requirements.

6. PAYMENTS TO OWNER

6.1 City Payment to Owner. City shall pay actual and necessary amounts owed to Owner hereunder within 45 days after receipt of three copies of Owner's itemized bill, signed by a responsible officer or an authorized delegate of Owner's organization and prepared on Owner's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated by Owner in accordance with the uniform system of accounts prescribed for Owner by the California Public Utilities Commission, Federal Energy Regulatory Commission or Federal Communications Commission, whichever is applicable.

6.2 No Charge for Betterment. It is understood and agreed that City will not pay for any Betterment and that Owner shall give credit to City as follows:

(a) The amount of any Betterment to the Facility resulting from Relocation.

(b) The salvage value of any materials or parts salvaged and retained by Owner if City's Contractor and Owner make arrangements for Owner to salvage or retain any

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materials. For the avoidance of doubt, Owner is not required to accept any materials or parts for salvage. If Owner and City's Contractor agree that Owner will take any particular materials or parts for salvage, Owner will provide notice in writing to City's Contractor, describing such materials or parts with particularity, and absent such a notice, no salvage credit will be given.

(c) If a new Facility or portion thereof is constructed to accomplish Relocation, an amount bearing the same proportion to the original cost of the displaced facility or portion thereof as its age bears to its normal expected life.

$$\text{Credit} = \frac{\text{Age of replaced Facility}}{\text{Normal expected life}} \times \text{Original cost}$$

A credit shall not be allowed against any portion of the cost that is otherwise chargeable to Owner.

6.3 Billing Procedure.

(a) Not more frequently than once a month, Owner will prepare and submit progress bills for costs incurred not to exceed Owner's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this Agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by City of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement.

(b) Invoices shall include the Agreement Number, actual hours worked (by activity), actual direct labor costs (by activity), direct non-labor costs, and overhead allocations, and be on company letterhead, including address and contact information, signed by the Owner's representative, and addressed to the City's Financial Operations Section. As used herein, the term "activity" shall refer to the activities set forth in Exhibit E. The activities and the "not to exceed" hourly rates and overheads are set forth in Exhibit E. The usual indirect and overhead charges attributable to the Facility Work and listed on Exhibit E, will be billed in accordance with Owner's Cost Allocation Standards, meaning Owner's uniform systems for allocating charges to customers, which may be an aggregate of internal systems using different nomenclature than "Cost Allocation Standards," then in effect. Documentation to support Owner's invoices should be retained by Owner and will be available if requested by City as described in Section 6.3(g) of this Agreement. The form of the invoice is attached as Exhibit G, and may be changed without an amendment to this Agreement.

(c) For services satisfactorily rendered and upon receipt and approval by the Contract Manager and Accounting of the invoices, City agrees to reimburse Owner for actual costs incurred. Provide 1 original and 2 copies of the invoice for payment. Invoices shall be submitted electronically, in PDF format, no more than monthly to:

EXHIBIT A:
UTILITY AGREEMENT

[Jesus Avitia, P.E.
Deputy City Engineer]
City of Fresno
2600 Fresno Street
Room 4036
Fresno, CA 93721
Attn:

(1 Original and 2 Copies)

(d) During the term of this Agreement, activities, overheads, and the “not to exceed rate” for each listed in Exhibit E may be changed without an amendment to this Agreement. Owner may also bill other usual direct, indirect, and overhead charges attributable to Facility Work provided such charges are regularly billed under a Cost Allocation Standard adopted by Owner in the regular course of business during the term of this Agreement, and may follow Owner's own guidelines as to the amounts reimbursable to employees and documentation required therewith. Any such change must be in writing; on Owner's letterhead; and identify the changed activity, overhead, or "not to exceed" rate, and reason prior to submittal of an invoice.

(e) Owner shall submit a final invoice to City within 270 days after completion of the Work. If City has not received a final bill within 270 days after notification of completion of the Work, and City has delivered to Owner fully executed Director's Deeds, Consent to Common Use or Joint Use Agreements for Owner's Facilities (if required), City will provide written notification to Owner of City's intent to close City's file within 30 days. Owner hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned. If City processes a final bill for payment more than 270 days after notification of completion of Owner's work, payment of the late bill may be subject to additional allocation and/or approval.

(f) The final invoice shall be in the form of an itemized statement of the total costs charged hereunder, less the credits provided for in this Agreement, and less any amounts covered by progress billings. Except, if the final invoice exceeds Owner's estimated costs solely as a result of a Revised Notice to Owner, a copy of said Revised Notice to Owner shall suffice as documentation. In any event if the final invoice exceeds the contract amount of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to the payment of Owner's final invoice. Any and all increases in costs that are the direct result of deviations from the work described in Section 4 of this Agreement shall have the prior written concurrence of City. If the final invoice shows a negative number because credits provided in this Agreement exceed the total amount remaining outstanding hereunder due to Owner, Owner shall issue payment to City for such amount within 45 days.

(g) Detailed records from which invoices are compiled shall be retained by Owner for a period of three years from the date of the final payment and will be available for audit by State and/or Federal auditors. Owner agrees to comply with Contract Cost Principles and Procedures as set forth in 48 C.F.R., Chapter 1, Part 31 et seq., and 49 C.F.R., Part 18 or 19 as applicable. If a subsequent State and/or Federal audit determines payments to be unallowable, Owner agrees to reimburse City upon receipt of City billing. This clause applies to Owner or its contractors.

EXHIBIT A:
UTILITY AGREEMENT

7. TERM

This Agreement will commence upon final execution by both parties. The parties may amend this Agreement as permitted by law.

8. GENERAL CONDITIONS

8.1 Cancellation of HSR Project.

(a) If City's HSR Project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by Owner, City will notify Owner in writing and City reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating this Agreement.

(b) All obligations of City under the terms of this Agreement are subject to the passage of the annual Budget Act by the State Legislature and the allocation of those funds. After execution or commencement of this Agreement, if the funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this project, City shall have the option to either (a) cancel this Agreement with no further additional liability occurring to City other than work performed by Owner to the date it receives notice of cancellation; or (b) offer an Agreement amendment to Owner to reflect the reduced amount. In either instance, the parties may execute an Amendment that shall provide mutually acceptable terms and conditions for terminating any work in progress.

(c) If at any time City becomes aware that funding will not be available, or has reasonable grounds for believing that funding may not be available to pay Owner for work being performed by Owner under this Agreement, City shall promptly notify Owner in writing of the circumstances (Inadequate Funding Notice). At that time, the parties will meet and confer to discuss a mutually agreeable resolution, which may include amending the Agreement, stopping work or other steps to ensure continuity of service to Owner's customers.

Any Inadequate Funding Notice will be sent to the Owner Contact designated below:

Jonathan Seager
Director, State Infrastructure
Pacific Gas and Electric Company
77 Beale Street, Mail Code B28R
San Francisco, CA 94177-1490

8.2 Legal Notices.

(a) This Section 8.2 is not intended to apply to routine communications between the parties related to the progress of the Work. This clause applies to situations where notice is required to be given under this Agreement or the Parties are asserting their legal rights and remedies. This section is not intended to replace any other applicable legal requirements.

EXHIBIT A:
UTILITY AGREEMENT

(b) Any communication, notice, or demand of any kind whatsoever which either Party may be required or may desire to give or to serve upon the other must be in writing and delivered by personal service (including express or courier service) or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight delivery service, in each case addressed as follows:

Owner:	City:
Law Department	Office of the City Attorney
Pacific Gas and Electric Company	City of Fresno
Attn: Managing Counsel, Commercial and Environmental	Attn: Douglas T. Sloan, City Attorney
77 Beale Street, Mail Code B30A	2600 Fresno Street, Room 2031
San Francisco, CA 94105	Fresno, CA 93721
Telephone: (415) 973-7467	Telephone: (559) 621-7500

(c) The project representatives identified pursuant to Section 1.5 shall be notified via email when a notice is sent.

(d) Notice shall be effective when received, unless a legal holiday for the State commences on the date of attempted delivery. In such cases, the effective date shall be postponed until the next business day.

8.3 Notice of Developments. Each Party will notify the other Party's representative(s) described in Section 1.5 of (a) any material disputes with third parties which may adversely affect such other Party and (b) material applications for, and receipt of, Governmental Authorizations which may involve the other Party.

8.4 Conflicts Between Federal Requirements and Owner Requirements. Notwithstanding the federal preemption terms set forth in Exhibit C Section 1, should any FRA mandated terms conflict with any terms of this Agreement, City will not violate the terms of this Agreement, but rather will confer with Owner toward devising a solution to the conflict. For example, if a particular materials item were required for the Work, but Owner had no such item on its approved materials list which would satisfy the "Buy America" requirement, City would not purchase and incorporate the item into the Work absent Owner's agreement.

8.5 Liability.

(a) Owner agrees to indemnify City against any loss and damage which shall be caused by any wrongful or negligent act or omission of Owner or of its agents or employees in the course

EXHIBIT A:
UTILITY AGREEMENT

of their employment arising from or connected with Owner's performance under this Agreement, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by City's comparative negligence or willful misconduct. Owner's indemnity obligations under this Agreement shall terminate upon the completion of the Work. In the event the foregoing indemnity conflicts with the applicable terms of any express indemnity provision set forth in Owner's easement relating to the Relocation work, any such claim shall be governed and responded to in accordance with Owner's easement.

(b) City agrees to indemnify and hold Owner, its officers, board members, directors, employees, affiliates and subsidiaries harmless against any loss and damage which shall be caused by any wrongful or negligent act or omission of City or any Subcontractor in the course of their employment arising from or connected with City's Work under this Agreement, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by Owner's comparative negligence or willful misconduct. City's indemnity obligations under this Agreement shall terminate upon the completion the Work, except for such claims or actions that may arise during the course of the Work. The foregoing indemnity shall not relieve Owner of its obligations under any express indemnity provision set forth in any Private Right-of-Way of Owner.

8.6 No Consequential Damages. Neither City nor Owner, or their respective contractors, subcontractors, agents, representatives, affiliates, servants, independent contractors, officers, directors, employees, successors and assigns shall be liable to the other for any consequential or indirect damages, excluding damages for willful misconduct or gross negligence, including loss of funding, whether foreseeable or not, arising out of, or in connection with such Party's failure to perform its obligations hereunder. The provisions of this Section shall survive the termination or expiration of this Agreement.

8.7 Owner's Contractors. Nothing contained in this Agreement shall create any contractual relation between the State and any of Owner's contractors (if any), and no subcontract shall relieve Owner of its responsibilities and obligations hereunder. Owner agrees to be as fully responsible to the State for the acts and omissions of its contractors and of persons whether directly or indirectly employed by any of them, in each case within the scope of their work performed on behalf of Owner hereunder, as it is for the acts and omission of persons directly employed by Owner. Owner's obligations to pay its contractors are an independent obligation from the State's obligation to make payments to Owner. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any of Owner's contractors.

8.8 Owner Subject to CPUC. City understands that Owner is a public utility and is subject to regulation by the CPUC for certain actions and operations. City further understands that Owner is required to comply with all applicable orders, rules, regulations, policies and administrative practices ("CPUC Rules") prescribed thereby. City will not require Owner to perform any act or fail to perform any act, or require any action, which would cause Owner to be in violation of CPUC Rules.

EXHIBIT B:
GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Parties. No oral understanding or agreement not incorporated in this Agreement is binding on the Parties.
3. ASSIGNMENT: This Agreement is not assignable by Owner, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Owner agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Owner agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Owner agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Owner agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.
5. DISPUTES: Owner shall continue with the responsibilities under this Agreement during any dispute which may arise between Owner and City regarding this Agreement. Notwithstanding any such dispute, City shall continue to make timely payments for services rendered under this Agreement that are not subject to the dispute. If a dispute regarding this Agreement arises, City and Owner shall meet and endeavor to reach resolution. If a resolution cannot be achieved, the matter may be forwarded to the Chief Program Manager of City and the Director, State Infrastructure Projects of Owner for resolution, and if no resolution is reached, either or both of the parties may refer the matter to non-binding mediation.
6. INDEPENDENT CONTRACTOR: Owner, and the agents and employees of Owner, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees of the State.
7. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Owner and its contractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Owner and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Owner and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Owner and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. Owner shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

EXHIBIT B:
GENERAL TERMS AND CONDITIONS

8. **TIMELINESS:** Time is of the essence in this Agreement.
9. **COMPENSATION:** The consideration to be paid Owner, as provided herein, shall be in compensation for all of Owner's expenses incurred in the performance hereof, including travel, per diem, and sales taxes, unless otherwise expressly so provided.
10. **GOVERNING LAW:** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
11. **CHILD SUPPORT COMPLIANCE ACT:** For any Agreement in excess of \$100,000, Owner acknowledges in accordance with Public Contract Code 7110, that:
 - a. Owner recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. Owner, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
12. **UNENFORCEABLE PROVISION:** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
13. **SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION:**
 - a. No commitment to achieve small business participation has been made under this Agreement.
 - b. No commitment to achieve disabled veteran business enterprise (DVBE) participation has been made under this Agreement.
14. **LOSS LEADER:** If this Agreement involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)
15. **COMPLIANCE:** Owner will, unless exempted, comply with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103)
16. **DRUG-FREE WORKPLACE REQUIREMENTS:** Owner will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

EXHIBIT B:
GENERAL TERMS AND CONDITIONS

- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the Work will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Work.

Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both and Owner may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: Owner has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 *et seq.*)

- 17. **EXPATRIATE CORPORATIONS:** Owner shall not be an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and Owner shall be eligible to contract with the State of California.
- 18. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, Owner shall be in compliance with Public Contract Code section 10295.3.
- 19. **CONFLICT OF INTEREST:** Owner needs to be aware of the following provisions regarding current or former state employees. If Owner has any questions on the status of any person rendering services or involved with this Agreement, the awarding agency must be contacted immediately for clarification.

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

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

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

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state

EXHIBIT B:
GENERAL TERMS AND CONDITIONS

agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

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

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

20. LABOR CODE/WORKERS' COMPENSATION: Owner is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. Owner will comply with such provisions before commencing the performance of the work of this Agreement.
21. AMERICANS WITH DISABILITIES ACT: Owner will comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 *et seq.*)
22. OWNER'S NAME CHANGE: An amendment is required to change Owner's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
23. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA: Owner is currently qualified to do business in California.
24. AIR OR WATER POLLUTION VIOLATION: Under the State laws, Owner shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
25. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

EXHIBIT C:
SUPPLEMENTAL FEDERAL AND SPECIAL TERMS AND CONDITIONS

1. FEDERAL REQUIREMENTS

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

Notwithstanding anything to the contrary contained in this Agreement (with the exception of Owner's Buy America obligations, which are completely described in this Exhibit C), all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Owner shall not perform any act, fail to perform any act, or refuse to comply with any City requests, which would cause City to be in violation of FRA requirements.

2. COMPLIANCE WITH FEDERAL REQUIREMENTS

Owner's failure to comply with Federal Requirements shall constitute a breach of this Agreement.

3. FEDERAL LOBBYING ACTIVITIES CERTIFICATION

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

- A. No State or Federal appropriated funds have been paid or will be paid, by or on behalf of Owner, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal Agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal Agreement, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, Owner shall complete and submit Standard Form LL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EXHIBIT C:
SUPPLEMENTAL FEDERAL AND SPECIAL TERMS AND CONDITIONS

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

4. DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of 2 C.F.R. 1200. As such, Owner is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.

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

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

5. SITE VISITS

Owner agrees that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review HSR Project accomplishments and for other reasons. If any site visit is made by FRA on the premises of Owner or any of its contractors under this Agreement, Owner shall provide and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by Owner or its contractor.

6. SAFETY OVERSIGHT

To the extent applicable to Owner's Facility Work, Owner agrees to comply with any Federal laws or regulations of the FRA or U.S. DOT pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

7. ENVIRONMENTAL PROTECTION

Owner and any subcontractor under this Agreement shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

- A. **Clean Air:** Owner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Owner agrees to report each violation to City, and understands and agrees that City shall in turn report each violation as required to assure notification to the FRA and the appropriate Environmental Protection Agency Regional Office.

EXHIBIT C:
SUPPLEMENTAL FEDERAL AND SPECIAL TERMS AND CONDITIONS

- B. **Clean Water:** Owner agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* Owner agrees to report each violation to City and understands and agrees that City shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.
- C. **Energy Conservation:** Owner agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6421 *et seq.*)
- D. **Agreement Not To Use Violating Facilities:** Owner agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. Owner shall promptly notify City if Owner or its contractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that Owner's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.
- E. **Environmental Protection:** Owner shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*
- F. **Incorporation of Provisions:** Owner shall include the above provisions (1) through (6) in every subcontract hereunder exceeding \$50,000 financed in whole or in part with federal assistance provided by the FRA.

8. LABOR PROVISIONS

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

9. FLY AMERICA

City will not pay for or reimburse any of Owner's international travel expenses.

10. CARGO PREFERENCE

Owner agrees to the following:

- A. To use privately owned United States-flag commercial vessels to ship at least 50 percent 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 the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

EXHIBIT C:
SUPPLEMENTAL FEDERAL AND SPECIAL TERMS AND CONDITIONS

- B. To furnish within 20 Working Days following the date of loading for shipments originating within the United States, or within 30 Working Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the first bullet of this clause above. This bill-of-lading shall be furnished to City (through the City's Contractor in the case of a subcontractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the HSR Project.
- C. To include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

11. SEISMIC SAFETY

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

12. RECYCLED PRODUCTS

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

13. CIVIL RIGHTS

The following requirements apply to this Agreement:

- A. **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended; 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended; 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990; 42 U.S.C. § 12132; and 49 U.S.C. § 306, Owner agrees that it will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Agreement. In addition, Owner agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.
- B. **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this Agreement:
- i. **Race, Color, Religion, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, Owner agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," including 41 C.F.R 60 *et seq.* (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive

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- Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the HSR Project. Owner agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Owner agrees to comply with any implementing requirements FRA may issue.
- ii. Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, Owner agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Owner agrees to comply with any implementing requirements FRA may issue.
 - iii. Disabilities: In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, Owner agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. Further, in accordance with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Owner also agrees that it will comply with the requirements of U.S. Department of Transportation, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, Owner agrees to comply with any implementing requirements FRA may issue.

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

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

14. ARRA FUNDED PROJECT

To the extent that funding for this Agreement has been provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5 Owner, including its contractors, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate or suspend this Agreement if Owner or its contractor fails to comply with the reporting and operational requirements contained herein.

15. ENFORCEABILITY

Owner agrees that if Owner or one of its contractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part,

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funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

16. PROHIBITION ON USE OF ARRA FUNDS

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

17. REQUIRED USE OF AMERICAN IRON, STEEL AND OTHER MANUFACTURED GOODS

Owner understands and acknowledges that the HSR Project is funded in part by and subject to the Passenger Rail Investment and Improvement Act (PRIIA) of 2008, Pub. L. 110-432 and applicable regulations, including 49 U.S.C. section 24405(a), which provides that Federal funds may not be obligated unless steel, iron, and manufactured goods used in FRA-funded projects are produced in the United States, unless a waiver has been granted by the US Secretary of Transportation. Owner hereby certifies that in the performance of this Agreement for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. Owner will require its suppliers to certify Buy America compliance with regard to materials used in the Work and will provide all such certificates to City. Certification will be substantially in the form of the Certificate of Buy America Compliance attached to this agreement as Exhibit C-1.

18. WAGE RATE REQUIREMENTS

Owner will comply with the provisions of 40 U.S.C. 3141 et seq. Owner will also comply with the Copeland "Anti-Kickback" Act provisions of 18 U.S.C. § 874 and 29 C.F.R. Part 3.

- A. If there is any conflict between the State prevailing wages and the Federal prevailing wages, the higher rate shall be paid.
- B. Wages in collective bargaining agreements negotiated under the Railway Labor Act (45 U.S.C. 151. et seq.) are deemed to comply with Davis-Bacon Act requirements.
- C. Any sub-agreement entered into as a result of this Agreement shall contain all of the provisions of this clause.

19. INSPECTION OF RECORDS

To the extent that funding for this Agreement has been provided through ARRA, in accordance with ARRA Sections 902, 1514 and 1515, Owner agrees that it shall permit the City, the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:

- A. Examine any records that directly pertain to, and involve transactions relating to, this Agreement; and

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

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

20. WHISTLEBLOWER PROTECTION

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

- A. Gross mismanagement of a contract relating to ARRA funds;
- B. A gross waste of ARRA funds;
- C. A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- D. An abuse of City related to implementation or use of ARRA funds; or
- E. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.

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

21. FRAUD AND FALSE STATEMENTS AND RELATED ACTS

- A. Owner acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. 13), as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to this Project. Upon execution of the underlying Contract, Owner certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FRA assisted project for which the Work is being performed. In addition to other penalties that may be applicable, Owner further acknowledges that if it makes or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as cited above on Owner to the extent the Federal Government deems appropriate.
- B. Owner also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FRA, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on Owner, to the extent the Federal Government deems appropriate.

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- C. Owner agrees to include the above two paragraphs in each Subcontract financed in whole or in part with federal assistance provided by FRA. It is further agreed that the paragraphs shall not be modified, except to identify the Subcontractor who will be subject to the provisions.
- D. Owner agrees that it shall promptly notify City and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

22. REPORTING REQUIREMENTS

Under this Agreement, Owner may perform work on projects funded in whole or in part with American Recovery and Reinvestment Act, 2009 (ARRA) funds. Accordingly, to the extent that funding is provided by ARRA, pursuant to ARRA requirements, Owner and all of Owner's contractors will cooperate with City in meeting all of its reporting requirements under ARRA. Owner shall provide all information required to meet such reporting requirements in a timely fashion.

23. SPECIAL TERMS AND CONDITIONS

1. TERMINATION

- A. **Termination for Cause:** City reserves the right to terminate this Agreement in the event of a material breach or failure of performance by Owner provided City has first given Owner written notice of such material breach or failure to perform and Owner has not cured any such material breach or failure to perform within thirty (30) days of receipt of said notice, provided, however, that, in the case of a material breach or failure to perform that is not reasonably capable of being cured within the thirty (30) day cure period, Owner shall have additional time to cure the breach if it diligently commences to cure the breach within such thirty (30) day cure period and diligently pursues such cure. All costs incurred prior to termination shall be paid to Owner.
- B. **Termination for Convenience:** City reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to Owner if terminated for the convenience of City. In the event of termination for convenience, City will pay Owner all costs Owner incurred prior to the date of termination, as well as all reasonable costs mutually agreed are necessary to effect the termination, including but not limited to demobilization costs but not including any lost profits.
- C. **Termination Issues For Subcontractors, Suppliers, And Service Providers:** Owner shall notify any contractor and service or supply vendor providing services under this Agreement of the termination date of this Agreement. Failure to notify any contractor and service or supply vendor shall result in Owner being liable for the termination costs incurred by any contractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to Owner.
- D. **Cost Principles Under Termination:** Termination settlement expenses will be reimbursed in accordance with 48 C.F.R., Federal Acquisition Regulations System, Chapter 1, Part 31. Subpart

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31.205-42 (c) dealing with initial costs is not applicable to Architectural and Engineering Agreement terminations.

2. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

Owner certifies that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised by or paid to any City agency employee. For breach or violation of this warranty, the City shall have the right, in its discretion, to terminate this Agreement without liability, to pay only for the value of the work actually performed, or to deduct from this Agreement price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

3. STATE PREVAILING WAGES RATES

The work called for in this Agreement may involve, in whole or in part, a “public work,” as that term is defined in Labor Code sections 1720 *et seq.*, and one or more employees of Owner or of one or more of Owner’s subcontractors may perform work to which federal and state prevailing wage laws, laws concerning apprentices, and other pertinent laws may apply. It is the obligation of the contractor to determine whether these laws apply to any of the work to be done pursuant to this Agreement.

To the extent that any of the work done pursuant to this Agreement, including work done pursuant to any subcontracts, falls within the definition of “public work” as set forth in Labor Code sections 1720 *et seq.*, and involves “workers,” as that term is defined in Labor Code section 1723, the following provisions apply.

1. The contractor shall comply with all obligations imposed on contractors by Labor Code section 1776. Any subcontracts will contain a provision requiring subcontractors to comply with all obligations imposed on subcontractors by Labor Code section 1776.
2. The contractor agrees to comply with the provisions of Labor Code section 1775, as it exists now and as it may be amended from time to time during the duration of this Agreement.
3. To the extent Labor Code sections 1771, 1775, 1776, 1777.5, 1813, and 1815 describe the obligations of a contractor or subcontractor engaged in a public work, those obligations are made a part of this Agreement as though fully set forth. Any contract executed between the contractor and a subcontractor shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815, and shall provide that the subcontractor shall comply with the provisions of those sections.
4. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in anyone calendar day and 40 hours in anyone calendar week in violation of the provisions of this article.
5. In accordance with the provisions of Section 3700 of the Labor Code, the contractor will be required to secure the payment of compensation to his employees.
6. To the extent the contractor or any subcontractor employs apprentices or employs workers in any apprenticeable craft or trade, it shall be the responsibility of the contractor to see to it that the

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contractor and the subcontractors comply with Labor Code section 1777.5, as it now exists and as it may be amended from time to time during the duration of this agreement.

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**EXHIBIT C-1:
BUY AMERICA CERTIFICATE OF COMPLIANCE**

[INSERT HEADER BLOCK WITH CONTRACT NAME/NUMBER AND IDENTIFICATION OF “PROJECT” and “SUPPLIER”]

This Buy America Certificate of Compliance is submitted in compliance with applicable statutory and regulatory City, including but not limited to 49 U.S.C. 24405 (the “Buy America Rule”). Supplier is aware that the Project may be funded in part by the United States Department of Transportation, Federal Railroad Administration, and that the Buy America Rule therefore may apply.

Supplier certifies that it will comply with the requirements of the Buy America Rule and in particular that all steel, iron, and manufactured goods it provides for the Project are produced in the United States. A list of these steel, iron, and manufactured goods are attached to this Certificate.

Date: _____

Supplier - Company: _____

Supplier - Signature: _____

Print Name: _____

Title: _____

EXHIBIT D:
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A. Recitals.

The City of Fresno ("City") and Pacific Gas and Electric Company ("Owner") are parties to a Utility Agreement (____ -- the "Utility Agreement"). Owner owns and maintains gas and electric transmission, distribution and service facilities, and telecommunications facilities, some of which will require relocation to accommodate the HSR Project [*This defined term to conform to what is used in the subcontract.*]. Under the Agreement, City has agreed to arrange and pay all of the costs of the engineering, procurement and construction of such relocation (the "Work"). _____ [*Name of Subcontractor*] ("XYZ") [*Insert identifying name for the Subcontractor instead of "XYZ", but it cannot be "Subcontractor" since that has its own definition*] has contracted with City or a Subcontractor pursuant to the _____ [*Name and date of subcontract*] ("Subcontract") [*Another term could be used here for the subcontract – conform throughout*] to provide services and materials as part of the Work. City is bound by certain terms under the Utility Agreement as to which compliance will be required also of XYZ. Consequently, the Subcontract hereby incorporates by reference the following terms.

B. Definitions.

"Subcontractor" means XYZ and any subcontractor at any level performing the work or providing the materials which XYZ has agreed to perform and provide hereunder.

"You" means XYZ and any Subcontractor; and "Your" is the possessive of "You."

C. Exemptions.

If You believe that any of the terms and conditions set forth in Section D below does not or should not apply to You, You may request that the party with whom You have contracted obtain concurrence from City, which will in turn seek concurrence from Owner. Absent written acknowledgment from Owner that any such term and condition does not apply to You, they all do.

D. Flowdown Terms.

1. Safety Precautions and Protection of Property.

- a. *Regulations and Conduct of Work:* You shall plan and conduct the Work to safeguard persons and property from injury. You shall direct the performance of the Work in compliance with reasonable safety and work practices and with all applicable federal, state, and local laws, rules, and regulations, including but not limited to "Occupational Safety and Health Standards" promulgated by the U.S. Secretary of Labor and the California Division of Occupational Safety and Health, including the wearing of the appropriate Personal Protective Equipment (PPE) at the worksite. Work in areas adjacent to electrically energized facilities and/or operating natural gas facilities shall be performed in accordance with said practices, laws, rules, and regulations. Owner may designate safety precautions in addition to those in use or proposed by City. Owner reserves the right to inspect the Work and to halt construction to ensure compliance with reasonable and safe work practices and with all applicable federal, state, and local laws, rules, and regulations. Neither the requirement that You follow said practices and

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applicable laws, rules, and regulations, nor adherence thereto by You, shall relieve You of the sole responsibility to maintain safe and efficient working conditions.

- b. *Owner's Safety Program.* You represent and warrant that You will perform all applicable Work in compliance with Owner's Contractor Safety Program Standard Contract Requirements, as may be modified from time to time. The Contractor Safety Program Standard Contract Requirements can be located and downloaded at: www.pge.com/contractorsafety and are hereby incorporated by reference into this Agreement. Notwithstanding the above, You are the "controlling employer" as defined under Cal OSHA and will remain responsible for all fines and liability arising from violation of the Contractor Safety Program Standard Contract Requirements and Legal Requirements.
- c. Owner reserves the right to inspect the Work to ensure compliance with reasonable and safe work practices and with all Applicable Law. If Owner at any time observes You performing the Work in an unsafe manner, or in a manner that may, if continued, become unsafe, then Owner may require the applicable person to stop the performance affected by the unsafe practice and not continue until it can be completed safely. Owner may designate safety precautions in addition to those in use or proposed by You. Owner's rights under this section shall not relieve You of the sole responsibility to maintain safe and efficient working conditions.
- d. *Controlled Site Access:* A distinctive visible identification badge shall be furnished by City and worn by Your employees when on Owner's property. Your guests and visitors shall secure a permit from Owner to enter any part of the worksite which is Owner property, and will be logged in and out of the property with Owner retaining the permit at the time of logging out. Your employees shall not enter electrically energized equipment areas or other areas out of construction limits except with written permission.
- e. *Construction Regulation:* You will at all times while performing Your obligations under this Agreement comply with the requirements of CPUC General Orders 95 (Overhead Electric Construction Standards), 112E (Gas System Construction Standards) and 128 (Underground Electric Constructions Standards), as they apply to this Agreement. It will be Your duty and responsibility while performing any cutting or welding to comply with the safety provisions of the National Fire Protections Association's "National Fire Codes", and Factory Mutual Engineering's cutting and welding procedures and the applicable requirements specified in Owner's associated documents.
- f. *Work and Safety Program:* You will have a work and safety program and rules for the Work. You shall enforce Your work and safety requirements for all Work performed on the work site. You will ensure that all Your personnel receive, read and sign a copy of the work and safety rules. You shall retain proof of compliance for Owner's inspection upon request. You will designate a safety contact person for all matters concerning Your work and safety programs.
- g. *First-Aid Facilities:* If first-aid facilities are required, You shall furnish, stock, and provide the necessary qualified personnel to maintain such first-aid facility at Your expense. Nothing contained in this Agreement shall relieve You from providing and maintaining all stretchers, blankets, first-aid material, and first-aid kits as required by applicable safety order of the State of California Department of Industrial Relations,

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Division of Occupational Safety and Health (Cal/OSHA) or as required by other federal, state or local laws, rules or regulations.

- h. *Standby Vehicle(s)*: If one or more standby vehicles is required for the transporting of seriously injured personnel, You shall furnish, maintain and operate such vehicle(s) at Your expense. If a standby vehicle is provided for transporting seriously injured project personnel to medical facilities, You shall have available specifically assigned workers who are qualified to drive the vehicle and to care for the injured in case of emergency.
- i. *Site Safety Plan*: When required by federal OSHA regulations (29 CFR 1910.120), by other Legal Requirements, or by Owner, You shall provide a written site safety plan for acceptance by Owner and the applicable regulatory agency(s) as required, prior to commencement of Work. The site safety plan shall establish policies and procedures for protecting the health and safety of personnel during all operations conducted at a site with Hazardous Materials or suspected Hazardous Materials. The plan shall contain information about the known or suspected hazards, routine and special safety procedures that must be followed, and other instructions for safeguarding the health and safety of all affected personnel.
- j. Owner's receipt of Your emergency action plan, safety plan, environmental plan or any other safety and health related information does not imply that Owner endorses the plan. You are solely responsible for performing the Work in compliance with all Legal Requirements.

2. Standards. You shall perform the Work generally using Good Utility Practice, and otherwise in compliance herewith. Your engineering, procurement and construction of Owner's Facilities shall comply with all requirements provided by, or made available by, Owner, to City or to You which pertain to engineering, procurement or construction of Owner's Facilities. For the avoidance of doubt, Owner will provide and make available such requirements in the same manner as Owner would to other entities constructing facilities to ultimately be owned by Owner, in some cases through access to information on Owner's website.

3. GO 176. You acknowledge that the design of electric and gas utility facilities within City's right-of-way is governed by General Order 176 ("GO 176") adopted by the CPUC. Designs for Owner's Facilities which will be located within City's right-of-way must meet the requirements of GO 176. Any proposed alternative design will be determined on a case by case basis and will require written approval from City and Owner, as provided for within GO 176.

4. NERC Requirements. Pursuant to a directive from the North American Electric Reliability Corporation ("NERC"), all employees and contractors with unescorted access to facilities and functions that Owner deems critical to the support of the electricity infrastructure ("Critical Facilities") must undergo employment background screening and training before being granted access to any Owner facilities. Owner has included in the category of those with "unescorted access" all City and subcontractor personnel ("Individual") working within Critical Facilities. The following requirements apply to any Work subject to the NERC requirements:

- a. The background screening program for each Individual includes each of the following: (i) Social Security number verification; (ii) county criminal check (up to three counties where the applicant

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/employee has lived in the past seven years); and (iii) "Global Watch" (check of 19 Federal and International Terrorist Watch lists).

- b. The NERC directive also requires that City or its subcontractor administer to each Individual with access to Critical Facilities an initial and annual Owner web-based training session. This training program will also be provided in CD and hard copy format.
- c. Following conclusion of an acceptable background check and certified completion of the above training courses, You will provide Owner's corporate security department with a completion confirmation for each Individual. Owner will issue each Individual a keycard to access the designated Owner facility to which they are assigned. Owner will deny access to Critical Facilities to any Individual who has not passed clearance.

5. Outsourced Gas Asset Management Activities.

- a. You must comply with the terms and conditions of Owner's Outsourced Gas Asset Management Activities Program ("OGAMAP") in the performance of all Work performed for Owner's gas operations organization. The OGAMAP requires that You demonstrate a strong commitment to gas safety excellence and maintain appropriate controls over the gas infrastructure supply chain. Any Work performed for Owner must be completed in full compliance with the following, as it may be modified from time to time: (i) Owner's Code of Conduct for Contractors, consultants, subcontractors, suppliers and vendors as found through this link (which code of conduct is incorporated by reference herein): http://www.pge.com/includes/docs/pdfs/b2b/purchasing/contractor_consultant_and_supplier_code.pdf; (ii) Owner's Gas Asset Management Policy TD-01; (iii) PG&E's Gas Asset Management Strategy and Objectives; (iv) PG&E's Gas Operations process for raising safety concerns and issues; and (v) all terms, conditions, and specifications for Work set forth herein.
- b. Should Owner require, You will obtain a complete understanding of Your role(s) supporting Owner in a gas emergency. As a reference guide, Owner will provide You with a copy of Owner's Gas Emergency Response Plan Volumes 1 and 2 and Gas Safety Plan provided to increase knowledge and understanding of providing a safe, efficient and coordinated response to emergencies affecting gas transmission and distribution systems. These documents provide emergency response guidance consistent with the Incident Command System.
- c. You will access and download a copy of Owner's Code of Conduct for Contractors, consultants, suppliers and vendors at the link provided in Section 4(a). You will receive an email invitation to access Owner's third party internet site www.poweradvocate.com to obtain access and to download the documents referenced in Sections 4(a)(ii) – (iv) and Section 4(b).
- d. You represent, warrant, and certify that You and Your employees performing Work under this Agreement have been provided, and have reviewed, the above-referenced documents and agree to comply with all terms and conditions contained in those documents.

6. Injury and Illness Prevention Program. In the performance of the Work, You acknowledge that You have an effective injury and illness prevention program which meets the requirements of all Applicable Laws, including but not limited to Section 6401.7 of the California Labor Code. You will ensure

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that any Subcontractor hired to perform any portion of the Work also has an effective injury and illness prevention program.

7. Work on Owner or Customer Property. The following provisions apply to the extent that the Work requires You (collectively, "Personnel") to have access to Owner assets, premises, customer property, or logical access to Owner data or systems (collectively, "Access").

a. *Criminal Background Checks.*

- i. You warrant and represent that You will not assign any Personnel to work requiring Access unless You have performed a criminal background check on each such individual (either at the time of hiring or during the course of employment). Prior to assigning work requiring Access to any Personnel with one or more criminal convictions during the last seven years, You must consider the gravity of the individual's offense, the time since the conviction, the successful completion of parole/probation, the individual's age at the time of conviction, the number of convictions, and the stability of the individual, including favorable work history. You will also consider the relation of the offense to the nature of the work or service the individual will perform.
 - ii. Notwithstanding the foregoing, You will not, under any circumstances, grant Access to an individual with one or more convictions for a "Serious Offense(s)", which is defined as violent and sex offenses, crimes against children, domestic violence, fraud, theft (including but not limited to identity theft), embezzlement, all felonies during the last seven years, and/or two or more DUIs in the past three years.
 - iii. You will maintain documentation related to Your criminal background check investigation for all Personnel requiring Access and make it available to Owner for audit if requested.
 - iv. You also agree to notify Owner if any of Your Personnel requiring Access are charged with or convicted of a Serious Offense during the course of Your performance under this Agreement.
- b. *Fitness for Duty.* You must ensure that Your Personnel granted Access report to work fit for duty. Personnel with Access may not consume alcohol while on duty and/or be under the influence of drugs that impair their ability to work safely. Owner expects each supplier to have policies in place that requires their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness. As a federal contractor, Owner does not recognize or allow work to be completed under the influence of marijuana, whether or not is it used for medical reasons.
- c. *Eligibility for Owner Work.* When assigning any Personnel to perform Work requiring Access, You will submit each person's full name and the last four digits of their social security number to Owner

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at the following e-mail address: RecruitingOperations@pge.com. Owner reserves the right to decline to accept any proposed Personnel, in which case You will promptly propose a replacement.

8. Document Retention and Production Requirements.

- a. You agree to retain all documents and data, whether paper or electronic, created, collected or received for Owner in the course of performing the Work, including without limitation, documents, data, plans, drawings, diagrams, investigative notes, field notes, tests, photographs, records, calculations, summaries, and reports; provided that You are not required to retain (i) draft versions of final written documents such as reports, presentations, or other written deliverables and (ii) documents that are inconsequential or ancillary to performance and documentation of the Work ("PG&E Documents") as follows:
- b. You will store PG&E Documents in a secure and organized manner. All PG&E Documents must be in legible form, whether paper or electronic. In managing and administering PG&E Documents, You will comply with the requirements of "The Generally Accepted Recordkeeping Principles®" (see www.arma.org), or with modified requirements approved in writing by Owner.
- c. Upon completion of the Work, Owner will specify which of PG&E Documents must be transmitted by You to Owner ("PG&E Records"), provided however, unless otherwise agreed by Owner:
 - i. You will transmit to Owner, or provide Owner access to, PG&E Records on request within 48 hours or sooner if needed (without limitation) for regulatory, CPUC, safety, audit and/or litigation requirements;
 - ii. Owner may specify that PG&E Records be delivered to Owner on a regular basis prior to completion of the Work;
 - iii. With respect to PG&E Documents not transmitted to Owner as PG&E Records, You must retain all such documents for 24 months after completion of the Work ("Retention Period"). During the Retention Period, PG&E Documents will be retained by You at no additional cost to Owner until disposed of in accordance with Section 7(f) below. To the extent Owner requests You to retain PG&E Documents after the Retention Period, You and Your contracting counterpart will mutually agree on the terms and conditions of the additional Retention Period;
 - iv. If PG&E Records are kept in electronic form, the following formats are acceptable for transmission to Owner: (A) PDF, CAD or TIFF for Drawings and diagrams and (B) PDF for all other documents. If PG&E Records transmitted to Owner consist of data in a proprietary format, You will make available to Owner the proprietary tools or software necessary to access the data including after the transfer of the data to Owner. This subsection (iv) does not abrogate Your obligation to produce PG&E Records in an alternative format (e.g., a native format) if so agreed by You in the course of performance of this Agreement, in which case You will produce PG&E Records in each of the formats agreed.

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("PG&E FLOWDOWN TERMS")

- d. PG&E Documents will be treated as confidential and will not be disclosed to others unless You are required to produce the documents pursuant to legal or regulatory requirements, in which case You will give Owner maximum practicable advance notice before any production.
- e. You will maintain a system for back-up of electronic PG&E Documents (e.g., files or databases) so they will be preserved for retrieval in case the originals are lost or destroyed.
- f. If Owner directs You to dispose of PG&E Documents, and provided the records retention period required by City has expired, You will do so in a confidential and secure manner, whether the format is electronic or paper. Proof of destruction of PG&E Documents will be submitted to Owner upon request.
- g. If Owner provides paper documents to You in order to convert them to digital electronic format, You will return both the paper documents and the documents converted to digital electronic format to Owner.

9. Materials; Approved Material Suppliers.

- a. You shall be responsible for (i) procurement of all materials in accordance with Owner requirements from Owner-approved Material Suppliers ("Approved Material Suppliers"); (ii) material storage and security; (iii) disposal of excess materials; and (iv) immediate removal from the job site of materials rejected by Owner. Equipment with repairable defects may be repaired rather than being replaced at the discretion of the responsible Owner standards engineer. Equipment to be replaced shall be removed from the job site without undue delay.
- b. Prior to the installation of materials, You shall provide Owner with the supplier's certifications that all permanent materials to be used in the Work comply with the applicable specifications and Drawings. All material shall be new and in first class condition and shall comply with the requirements of this Agreement, with the exception of equipment that is pending repair.
- c. Storage and handling of all material shall be in accordance with the applicable Owner standards or manufacturer recommendations. Furnishing protective storage facilities for materials shall be Your responsibility.
- d. You acknowledge that there is a process for a supplier to become an Approved Material Supplier if it is not already on Owner's list of approved material suppliers; and that You will contact Owner in such a case to timely complete the process. Certain relevant information can be found here: <http://www.pge.com/en/b2b/purchasing/suppliers/index.page>.
- e. If You have a previous relationship with Owner to supply materials or labor, the warranty under the Subcontract will be the same as applies for comparable materials or labor supplied by You directly to Owner, and in any event shall be for a minimum of one year from the date of final acceptance of Your work by Owner. The warranty terms, including duration, shall be provided to City. You agree that your warranty will be assigned by City to Owner.
- f. You will not request that Owner procure for You or provide to You any materials whatsoever for incorporation in the HSR Project, except through a formal written communication by You to City.

EXHIBIT D:
TERMS AND CONDITIONS APPLICABLE TO SUBCONTRACTORS
("PG&E FLOWDOWN TERMS")

You will not incorporate any materials procured for You or provided to You by Owner into the HSR Project unless you have a written agreement from Owner allowing such incorporation, expressly describing the particular materials.

10. Underground Service Alert Notification. Before digging, You shall contact, "Underground Service Alert" (USA), and abide by its rules and procedures.

11. Gas Service Records. Owner will provide to You "gas service records". The gas service records must be returned to Owner with As-Built correction prior to acceptance and pressurization of the gas services.

12. Not to Bind Owner. You shall not bind or purport to bind Owner.

13. Remedy of Deficiencies. At any time during construction, should any phase of the engineering, equipment procurement, or construction of Owner's Facilities not meet the standards and specifications required hereby, You shall be obligated to remedy deficiencies in that portion of Owner's Facilities.

14. Insurance. Owner shall be named as additional insured on any liability insurance policies required under this Agreement.

15. Owner Access. At any time during construction, Owner shall have the right to gain unrestricted access to the Facilities installed under this Agreement by You, to conduct inspections of the same, and to be present during performance of Work. Owner has the right to make field and shop inspections and material tests and to perform all of its customary QA/QC if it so elects. You agree that neither the making, nor the failure to make, inspections and tests nor the express or implied approval of the Work by Owner shall relieve You from the responsibility to complete and guarantee the Work as specified. Rejected Work shall be remedied at Your expense.

16. City's Engineer(s). You shall require a City's Engineer to be in charge of each worksite, to supervise the Work, to exercise control as may be required and to be available to Owner when Work is being performed.

17. Avoiding Inconvenience to Owner's Customers. The Work shall be engineered, scheduled and performed so as to minimize outage time and other inconvenience to Owner's customers.

18. Hazardous Materials. Upon discovery of Hazardous Material in connection with the Work, You shall confer with City to explore all reasonable alternatives and agree on a course of action, and You shall immediately reschedule the Work to complete the Work in accordance with City's reasonable schedule and in compliance with Applicable Law concerning the disposition of Hazardous Material. Each Party retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with existing law.

19. Records.

- a. You shall provide documentation to warrant that the installed facilities meet or exceed the requirements of this Agreement and are installed in the proper location. In addition, You will

EXHIBIT D:
TERMS AND CONDITIONS APPLICABLE TO SUBCONTRACTORS
("PG&E FLOWDOWN TERMS")

provide As-Built Drawings and marked up service orders (when applicable) in a form specified by Owner.

- b. You shall provide (A) Certified copies of Owner's approved Qualification records for all welders/plastic joiners; and (B) Testing documents including calibration documents for testing equipment.

20. Prevailing Wage. Pursuant to Public Works Case No. 2001-059 determination by the California Department of Industrial Relations dated October 25, 2002, work performed by You, as one of City's contractors, is a public work under the definition of Labor Code Section 1720(a) and is therefore subject to prevailing wage requirements. You shall verify compliance with this requirement.

21. Performing IBEW Represented Work.

(a) The provisions of this Section 19 will apply if You perform Work that is normally performed by Owner employees represented by the International Brotherhood of Electrical Workers ("IBEW"), Local 1245.

(b) If Owner identifies any Work as construction work normally and historically performed by IBEW-represented Owner employees in one of the following departments, then such construction work must only be performed by a contractor who is signatory to an agreement with IBEW Local 1245 that covers the identified Work: Electric Transmission and Distribution (T&D), Gas T&D, or Substation Departments (collectively, the "Identified Departments"). You will not subcontract such construction work to a non-signatory contractor or to a contractor who is signatory to a union other than IBEW Local 1245, unless such contractor has requested and received the prior written approval of Owner, which approval may be contingent upon, among other things, receipt of any necessary third party approvals.

(c) The provisions of this Section 19 do not apply to (i) maintenance work normally and historically performed by IBEW-represented Owner employees in the Identified Departments or (ii) construction and maintenance work normally performed by IBEW-represented Owner employees in all other Owner departments (collectively, "Other Work"). For Work Owner identifies as Other Work not subject to the requirements of this Section 19, City will pay its personnel wages that meet or exceed prevailing wages. For purposes of this Section 19(c), prevailing wages will be as defined by California Labor Code Sections 1770, 1773, and 1773.1.

(d) At Owner's request, you will provide Owner a certified copy of Your and Your subcontractors' payroll, including benefits, broken out by Owner department for all Work that is subject to this Section 19.

(e) All requirements of this Section 19 will extend to subcontractors (inclusive of all tiers).

(f) If the provisions of this Section 19 conflict with the requirements of other sections of this Agreement, this Section 19 will prevail.

EXHIBIT D:
TERMS AND CONDITIONS APPLICABLE TO SUBCONTRACTORS
("PG&E FLOWDOWN TERMS")

22. Labor Relations.

(a) *General.* You shall promptly notify Owner in writing of any labor dispute or anticipated labor dispute which may affect the time, performance or cost of the Work.

(b) *Local Bargaining.* In addition to Your legal obligations under the Labor-Management Relations Act, if You are a subscriber to a multi-employer bargaining association or group, You will, if Owner directs, participate to the fullest extent in the collective bargaining of that group with any labor organizations claiming jurisdiction over any portion of the Work.

(c) *Interim Agreements.* You will not make interim agreements with labor unions during contract bargaining designed to avoid strikes sanctioned by an international union or by a local building trades council or engage in other activities which might undermine management efforts at the bargaining table.

(d) *Strike.* In the event of a labor dispute or strike by Your or Your subcontractor's (inclusive of all tiers) employees that threatens the progress or cost of the Work or Owner's labor relations, or which disrupts Owner's operations, or results in a secondary boycott at Owner facilities, Owner reserves the right to restrict additional hiring of Your or subcontractors' (inclusive of all tiers) employees, to suspend or discontinue Your or any subcontractors' (inclusive of all tiers) Work, or terminate this Agreement. This Section 19 will be applicable whether or not You or any of Your subcontractors (inclusive of all tiers) is directly involved in a labor dispute.

(e) *Existing Union Contracts.* You will not make any new labor agreements with any local construction trade union affecting the performance of the Work or its cost to Owner or City, independent of or in conflict with agreements in effect between the local contractors' association and the union, without first obtaining written approval from Owner.

(f) *National Agreements.* You will, within 15 days after award of a contract or notice to proceed, whichever is later, for any Work hereunder, supply Owner with copies of national agreements to which You are a party. No later than five days before the expiration of any local agreement which may affect the Work, You will meet with Owner for the purpose of discussing the appropriate course of action.

(g) *Jurisdictional Disputes.* You and Your subcontractors (inclusive of all tiers) will take steps to resolve violations of collective bargaining agreements and jurisdictional disputes, including without limitation the filing of appropriate process with any court or administrative agency having jurisdiction to settle, enjoin, or to award damages resulting from violations of collective bargaining agreements or from jurisdictional disputes.

(h) *Labor Supply.* You will provide a sufficient number of skilled union workers to fulfill the requirements of this Agreement.

EXHIBIT D:
TERMS AND CONDITIONS APPLICABLE TO SUBCONTRACTORS
("PG&E FLOWDOWN TERMS")

(i) *Apprentices.* It is important to Owner that the Work be performed in the most economical manner consistent with requirements of this Agreement. It is also in Owner's best interest to have an adequate number of trained workers within its service area to perform construction work that may be required. You will actively participate in union apprentice programs and exert Your best effort to maintain the maximum complement of apprentices in the field work force as permitted by the local collective bargaining agreements. You will employ during the performance of the Work the number of apprentices or trainees, or both, in each occupation, called for by each applicable labor agreement; will take whatever steps may be necessary to assure that 25% of the apprentices or trainees in each occupation are in their first year of training; and will agree to maintain and make available for inspection, upon Owner's request, Your records on employment of apprentices, trainees, and journeymen, in each occupation.

(j) *Use of Prefabricated Material.* You will install prefabricated or preassembled equipment where specified or purchased by your contracting counterparty, or otherwise where it is deemed to be the most economical alternative fabricated in a union shop and without necessary change or rework.

23. Prior to performing any Work on "joint poles", i.e., those occupied by other utilities or users besides Owner, You or City's Contractor will coordinate in a customary manner with all joint users, including sending advance notices of intent and performing pole loading calculations. After performing such Work, You will provide all relevant inputs to Owner's software application which keeps records of joint pole users and configurations.

24. You will provide all relevant inputs to Owner's "Fast Flow Estimating (FFE) Tool", a web based (cloud) software application, and/or any substitute or additional tool. It is designed to inventory/cost material for Owner distribution gas and electric designs.

EXHIBIT E:
 RATES

COST ELEMENT DESCRIPTION / ACTIVITY TYPE	RATE NOT TO EXCEED	QUANTITY	UNITS	INVOICE SUMMARY CALL OUT	NOTES
OVERHEAD COSTS / NOT TO EXCEED					
Estimating	37%			Engineering	Applied to all contract and construction labor costs
Estimating - Internal	57%			Engineering	Applied to all contract and construction labor costs
Mapping	12%			Engineering	Applied to all contract and construction labor costs
Service Planning	18%			Engineering	Applied to all contract and construction labor costs
Capitalized A&G	50%			Overhead	Applied to all direct labor costs
AFUDC	20%			Overhead	Applied to all costs when the project is anticipated to have 30 plus days of construction
Benefits OH	90%			Overhead	Applied to all direct labor costs
Building Service Overhead	18%			Overhead	Applied to all direct labor costs
Pension/PBOP Intercompany Surcharge	18%			Overhead	Applied to all direct labor costs
Fleet OH	58%			Overhead	Applied to all direct labor costs
Indirect Labor - Cust Care	35%			Overhead	Applied to customer care direct labor costs
Indirect Labor - Electric	50%			Overhead	Applied to all electric labor costs
Indirect Labor - Environmental Land	50%			Overhead	Applied to all environmental land labor costs
Indirect Labor - Gas	40%			Overhead	Applied to all gas labor costs
Indirect Labor - IT	70%			Overhead	Applied to all IT labor costs
Insur & Casualty Intercompany Surcharge	14%			Overhead	Applied to all direct labor costs
IT Device OH	11%			Overhead	Applied to all direct labor costs
Material Burden	24%			Overhead	Applied to all material costs
Minor Materials OH	16%			Overhead	Applied to all material costs
Operation Mgmt & Support - Cust Care	60%			Overhead	Applied to customer care direct labor costs
Operation Mgmt & Support - Electric	70%			Overhead	Applied to all electric labor costs
Operation Mgmt & Support - Environ Land	35%			Overhead	Applied to all environmental land labor costs
Operation Mgmt & Support - Gas	60%			Overhead	Applied to all gas labor costs
Operation Mgmt & Support - IT	25%			Overhead	Applied to all IT labor costs
Paid Time Off	41%			Overhead	Applied to all direct labor costs
Payroll Taxes OH	34%			Overhead	Applied to all direct labor costs
Spoils & Other	12%			Overhead	Applied to all direct labor costs
HOURLY LABOR RATE / NOT TO EXCEED					
Account Services	\$100	1	HRS	Engineering	
Account Services DoubleTime	\$187	1	HRS	Engineering	
Account Services Overtime	\$141	1	HRS	Engineering	
Acquisition - Misc	\$149	1	HRS	Engineering	
Administrative Services	\$130	1	HRS	Engineering	
Administrative Services - Double Time	\$164	1	HRS	Engineering	
Administrative Services - OT	\$130	1	HRS	Engineering	
Analyst Services	\$147	1	HRS	Engineering	
Analyst Svcs DoubleTime	\$183	1	HRS	Engineering	
Analyst Svcs Overtime	\$166	1	HRS	Engineering	
Apprentice	\$169	1	HRS	Engineering	
Apprentice - DT	\$197	1	HRS	Engineering	
Apprentice - OT	\$169	1	HRS	Engineering	
Build	\$94	1	HRS	Engineering	
Build / Dev / Enhance DoubleTime	\$167	1	HRS	Engineering	
Build / Dev / Enhance OverTime	\$115	1	HRS	Engineering	
Civil Construction	\$91	1	HRS	Construction	
Civil Construction DT	\$155	1	HRS	Construction	
Civil Construction OT	\$116	1	HRS	Construction	
Civil Design Standard Time	\$118	1	HRS	Engineering	
Civil Design Double Time	\$166	1	HRS	Engineering	
Civil Design Overtime	\$137	1	HRS	Engineering	
Civil Eng Standard Time	\$118	1	HRS	Engineering	
Civil Engineer DoubleTime	\$166	1	HRS	Engineering	
Civil Eng Overtime	\$148	1	HRS	Engineering	
Community Relations	\$183	1	HRS	Engineering	
Construction Services	\$131	1	HRS	Construction	
Construction Doubletime Services	\$183	1	HRS	Construction	
Construction Overtime Services	\$175	1	HRS	Construction	
Consulting Services	\$196	1	HRS	Engineering	
Contract Electrical Construction	\$150	1	HRS	Construction	
Contract Electrical Construction DT	\$155	1	HRS	Construction	
Contract Electrical Construction OT	\$150	1	HRS	Construction	
Contractor Admin	\$300	1	HRS	Construction	
Corrosion Doubletime	\$128	1	HRS	Engineering	

EXHIBIT E:
RATES

COST ELEMENT DESCRIPTION / ACTIVITY TYPE	RATE NOT TO EXCEED	QUANTITY	UNITS	INVOICE SUMMARY CALL OUT	NOTES
Corrosion Overtime	\$109	1	HRS	Engineering	
Corrosion Service	\$85	1	HRS	Engineering	
Design Drafting Services	\$78	1	HRS	Engineering	
Design Drafting Services - Overtime	\$108	1	HRS	Engineering	
Design Services	\$148	1	HRS	Engineering	
Design Services Doubletime	\$175	1	HRS	Engineering	
Design Services Overtime	\$159	1	HRS	Engineering	
Electric Estimating	\$148	1	HRS	Engineering	
Electric Estimating Doubletime	\$175	1	HRS	Engineering	
Electric Estimating Overtime	\$159	1	HRS	Engineering	
Engineering Services	\$196	1	HRS	Engineering	
Engineering Doubletime	\$218	1	HRS	Engineering	
Engineering Services - OT	\$210	1	HRS	Engineering	
Engineering/Mapping	\$129	1	HRS	Engineering	
Engineering/Mapping Services - Doubletime	\$186	1	HRS	Engineering	
Engineering/Mapping Services Overtime	\$143	1	HRS	Engineering	
Environmental Planning & Permitting-Misc	\$161	1	HRS	Engineering	
Environ Plan & Permit DoubleTime	\$176	1	HRS	Engineering	
Environ Plan & Permit Overtime	\$161	1	HRS	Engineering	
Environmental Services	\$161	1	HRS	Engineering	
Environmental Services - DT	\$176	1	HRS	Engineering	
Environmental Services - OT	\$161	1	HRS	Engineering	
Environmental Site Remediation	\$206	1	HRS	Engineering	
Estimating Services	\$78	1	HRS	Engineering	
Estimating Doubletime	\$144	1	HRS	Engineering	
Estimating Overtime Services	\$108	1	HRS	Engineering	
Field Services	\$91	1	HRS	Engineering	
Field Services - Doubletime	\$176	1	HRS	Engineering	
Field Services - Overtime	\$132	1	HRS	Engineering	
Gas Estimating	\$95	1	HRS	Engineering	
Gas Estimating Doubletime	\$175	1	HRS	Engineering	
Gas Estimating Overtime	\$131	1	HRS	Engineering	
GIS Services	\$87	1	HRS	Engineering	
GIS Svcs DoubleTime	\$171	1	HRS	Engineering	
GIS Svcs Overtime	\$128	1	HRS	Engineering	
Inspection Services	\$149	1	HRS	Construction	
Inspection Services DT	\$167	1	HRS	Construction	
Inspection Services OT	\$149	1	HRS	Construction	
IT Analyze, Plan, Mtce, etc.	\$280	1	HRS	Engineering	
IT Analyze, Plan, Mtce, etc. Tier 2	\$134	1	HRS	Engineering	
IT Consulting Proj Mgnt	\$280	1	HRS	Engineering	
IT SD Project Deliv	\$97	1	HRS	Engineering	
IT-Telcom Maint	\$112	1	HRS	Engineering	
Land Rights - Misc	\$149	1	HRS	Engineering	
Land Rights Doubletime	\$164	1	HRS	Engineering	
Land Rights Overtime	\$149	1	HRS	Engineering	
Land Surveying & Engineering Supprt-Misc	\$149	1	HRS	Engineering	
Legal Services I	\$187	1	HRS	Engineering	
Line Design Standard Time	\$118	1	HRS	Engineering	
Line Design Double Time	\$199	1	HRS	Engineering	
Line Design Overtime	\$145	1	HRS	Engineering	
Line Services Standard Time	\$118	1	HRS	Engineering	
Line Services Doubletime	\$166	1	HRS	Engineering	
Line Services Overtime	\$148	1	HRS	Engineering	
Maintain & Operate Services	\$100	1	HRS	Engineering	
Maintenance & Operations Doubletime Services	\$188	1	HRS	Engineering	
Maintain & Operate Overtime Services	\$141	1	HRS	Engineering	
Maintenance Services	\$108	1	HRS	Engineering	
Maintenance Services - DT	\$194	1	HRS	Engineering	
Maintenance Services Overtime	\$146	1	HRS	Engineering	
Manage L&EM	\$86	1	HRS	Engineering	
Manage L&EM - WRO Support	\$86	1	HRS	Engineering	
Manage L&EM - WRO Sup Doubletime	\$164	1	HRS	Engineering	
Manage L&EM - WRO Sup Overtime	\$123	1	HRS	Engineering	
Management Services	\$170	1	HRS	Engineering	

EXHIBIT E:
RATES

COST ELEMENT DESCRIPTION / ACTIVITY TYPE	RATE NOT TO EXCEED	QUANTITY	UNITS	INVOICE SUMMARY CALL OUT	NOTES
Management Svcs DoubleTime	\$229	1	HRS	Engineering	
Management Services - OT	\$172	1	HRS	Engineering	
Mapping Services	\$78	1	HRS	Engineering	
Mapping Doubletime	\$144	1	HRS	Engineering	
Mapping Overtime Services	\$108	1	HRS	Engineering	
Monitoring/Controlling Services	\$177	1	HRS	Engineering	
Monitoring/Controlling Services - Double Time	\$266	1	HRS	Engineering	
Monitoring/Controlling Services - Overtime	\$354	1	HRS	Engineering	
Operating Services	\$101	1	HRS	Engineering	
Operating Services OT	\$128	1	HRS	Engineering	
PG&E Contractor 1	\$160	1	HRS	Construction	
Planning Services	\$94	1	HRS	Engineering	
Planning Services DoubleTime	\$159	1	HRS	Engineering	
Planning Overtime Services	\$119	1	HRS	Engineering	
Program Administration Service	\$131	1	HRS	Engineering	
Project Management Services	\$115	1	HRS	Engineering	
Project Management Doubletime	\$183	1	HRS	Engineering	
Project Management Overtime	\$166	1	HRS	Engineering	
Records Management	\$135	1	HRS	Engineering	
SCADA Services	\$102	1	HRS	Engineering	
SCADA-Double Time	\$187	1	HRS	Engineering	
SCADA-Overtime	\$107	1	HRS	Engineering	
Substation Design Standard Time	\$101	1	HRS	Engineering	
Substation Design Double Time	\$199	1	HRS	Engineering	
Substation Design Overtime	\$145	1	HRS	Engineering	
Substation Eng Standard Time	\$118	1	HRS	Engineering	
Substation Engineering Doubletime	\$229	1	HRS	Engineering	
Substation Eng Overtime	\$172	1	HRS	Engineering	
Switching Operations Service	\$180	1	HRS	Engineering	
Switching Operations Service - Overtime	\$242	1	HRS	Engineering	
Switching Operations Svcs. - Doubletime	\$390	1	HRS	Engineering	
System Protection Straight Time	\$117	1	HRS	Engineering	
System Protection Overtime	\$165	1	HRS	Engineering	
System Protection Doubletime	\$213	1	HRS	Engineering	
Technical Services	\$175	1	HRS	Engineering	
Testing	\$184	1	HRS	Engineering	
Testing Overtime	\$244	1	HRS	Engineering	
Testing Doubletime	\$352	1	HRS	Engineering	

EXHIBIT F:
 FORM OF NOTICE TO OWNER

NOTICE TO OWNER

Number _____

Owners File: PM	
Date:	Construction Package CFP-01 G Street Realignment

To: Pacific Gas and Electric Company
 650 "O" Street, Bag 23
 Fresno, CA 93760
 Attn: Mr. Gage Fleming

1. The City of Fresno requires Relocation of Owner's Electric Distribution Facilities in Construction Package CFP-01 (the "G Street Realignment") to accommodate the California High-Speed Train Project ("HST Project"). The Relocation shall be performed pursuant to the Utility Agreement between CITY and OWNER (XXX-___), at 100% CITY expense.
2. Scope of Work: Perform Facility Work associated with the Relocation of Owner's Facilities within and around the rail corridor as described below:
3. The work schedule under this Notice to Owner shall be as follows: Begin work _____, 20____ and complete work by _____, 20____.
4. *[Describe with particularity which Subcontractor is to perform which portions of the Work (must be an Approved Subcontractor). Describe with particularity which materials suppliers will supply materials (must be Approved Materials Suppliers).]*

By countersignature below, OWNER acknowledges and agrees to the Scope of Work and Work Schedule set forth in this Notice to Owner.

CITY OF FRESNO

By: _____
 Name:
 Title:

EXHIBIT F:
FORM OF NOTICE TO OWNER

Acknowledged and agreed:

PACIFIC GAS AND ELECTRIC COMPANY

By: _____
Name:
Title:

SAMPLE



February 28, 2019

Financial Operations Section
California High-Speed Rail Authority
770 L Street, Suite 620 MS3
Sacramento, CA 95814

Gage Fleming
Land Agent
650 O Street, Mail Bag #23
Fresno, CA 93760
559-263-7374
gef5@pge.com

Utility: PG&E

Project: CFP-01

Contract No: City of Fresno XX-XX

Invoice Date: 2-28-2019

Invoice#: 7515639

Invoice Period: 1-01-19 ---- 2-01-19

Invoice Amount: \$14,711.65

ARRA Reimbursement

FR-HSR-0009-10-01-00

California High-Speed Train Program ARRA Grant

California High-Speed Rail Authority

Grant Task:

Mail all payments to the above address.

Submitted By: _____
Gage Fleming
Land Agent



Gage Fleming
Land Agent
650 O St, Mail Bag #23
Fresno, CA 93760
559-263-7374
gef@pge.com

RE: City of Fresno XX-XX Invoice # 7515639

Work Summary:

NTO 1 – Coordination – 42323171

- Mark and locate at CP 2-3 Design Build Contractor's request
- HSR impacts on Corcoran Substation property, prepare for and meet with HSR and the designers

Cost Summary:

NTO #	Order #	Project	Billing Amount
1	42323171	WRO Coordination	\$14,711.65
		TOTAL:	\$14,711.65

HSR 14-49 Billing Summary

NTO #	Order #	Project	Billing Amount
1	42323171	WRO Coordination	\$14,711.65
		TOTAL:	\$14,711.65

SAMPLE

City of Fresno XX-XX 42323171-WRO Coordination - Billing Period 1/1/19 through 1/31/19

Activity	Val in RC	Quantity	HRS	Doc. Date	Vendor Description
Estimating	\$230.23	1.00		2/1/2016	
Estimating	\$380.12	1.00		1/27/2016	
Mapping	\$43.55	1.00		2/1/2016	
Mapping	\$71.89	1.00		1/27/2016	
Service Planning	\$110.43	1.00		2/1/2016	
Service Planning	\$182.34	1.00		1/27/2016	
Paid Time Off	-\$31.05	1.00		1/29/2016	
Paid Time Off	\$338.12	1.00		2/1/2016	
Paid Time Off	\$788.01	1.00		1/27/2016	
Indirect Labor - Electric	\$97.62	1.00		2/1/2016	
Indirect Labor - Electric	\$245.56	1.00		1/27/2016	
Indirect Labor - Gas	\$315.09	1.00		2/1/2016	
Indirect Labor - Gas	\$545.97	1.00		1/27/2016	
Indirect Labor - Environmental Land	\$137.82	1.00		2/1/2016	
Indirect Labor - Environmental Land	\$433.17	1.00		1/27/2016	
Oper. Mgmt & Support	\$1,377.74	1.00			
Fleet	\$1,158.90	1.00			
Building Services	\$380.64	1.00			
IT	\$186.63	1.00			
Benefits	\$1,938.90	1.00			
Payroll Taxes	\$657.78	1.00			
Pension & PBOP	\$624.66	1.00			
Workers Comp / LTD	\$379.11	1.00			
Construction	\$22.39	0.50	HRS	2/1/2016	
Construction	\$23.73	0.50	HRS	1/21/2016	
Construction	\$44.78	1.00	HRS	1/25/2016	
Construction	\$44.78	1.00	HRS	1/25/2016	
Construction	\$44.78	1.00	HRS	1/12/2016	
Construction	\$44.78	1.00	HRS	1/20/2016	
Construction	\$44.78	1.00	HRS	1/20/2016	
Construction	\$44.78	1.00	HRS	1/20/2016	
Construction	\$44.78	1.00	HRS	1/25/2016	
Construction	\$44.78	1.00	HRS	2/1/2016	
Construction	\$44.78	1.00	HRS	2/1/2016	
Construction	\$44.78	1.00	HRS	2/1/2016	
Construction	\$44.78	1.00	HRS	1/25/2016	
Construction	\$44.78	1.00	HRS	2/1/2016	
Construction	\$67.17	1.50	HRS	1/20/2016	
Construction	\$89.56	2.00	HRS	1/11/2016	
Construction	\$89.56	2.00	HRS	2/1/2016	
Construction	\$89.56	2.00	HRS	2/1/2016	
Construction	\$89.56	2.00	HRS	2/1/2016	
Construction	\$134.34	3.00	HRS	1/20/2016	
Construction	\$179.12	4.00	HRS	1/25/2016	
Construction	\$179.12	4.00	HRS	2/1/2016	
Acquisition - Misc	\$57.32	1.00	HRS	1/25/2016	
Acquisition - Misc	\$171.96	3.00	HRS	1/12/2016	
Acquisition - Misc	\$171.96	3.00	HRS	2/1/2016	
Acquisition - Misc	\$200.62	3.50	HRS	1/25/2016	
Acquisition - Misc	\$229.28	4.00	HRS	2/1/2016	
Construction Overtime Services	\$30.80	0.50	HRS	2/1/2016	
Construction Overtime Services	\$30.80	0.50	HRS	2/1/2016	
Construction Overtime Services	\$30.80	0.50	HRS	1/20/2016	
Construction Overtime Services	\$61.59	1.00	HRS	1/25/2016	
Construction Overtime Services	\$61.59	1.00	HRS	2/1/2016	
Construction Overtime Services	\$61.59	1.00	HRS	2/1/2016	
Construction Overtime Services	\$92.39	1.50	HRS	2/1/2016	
Construction Overtime Services	\$92.39	1.50	HRS	1/20/2016	
Construction Overtime Services	\$123.18	2.00	HRS	1/25/2016	
Construction Overtime Services	\$369.54	6.00	HRS	1/25/2016	
Land Rights - Misc	\$57.32	1.00	HRS	1/19/2016	
Land Rights - Misc	\$171.96	3.00	HRS	1/19/2016	
Land Rights - Misc	\$601.86	10.50	HRS	1/19/2016	
Total Hours this Page:		78.00	HRS		
TOTAL COSTS:	\$14,711.65				

EXHIBIT H:
COST ESTIMATE

G Street Relocation Cost Estimate

	Estimated Cost (\$000)
Gas Distribution Support	\$200
Electric Distribution Support	\$50
Design Support	\$0
Construction Support	\$0
Land Oversight	\$90
PMO Oversight	\$65
USA	\$10
Total Estimate, before Contingency	\$415
AACE Level 5 Contingency*	\$415
Total Estimate, including Contingency	\$830

* Contingency is not included in the Contract amount, subject to Section 3.2(b).
Per the AACE cost estimate classification system, for AACE Class 5, actual costs are expected to be within a range of 100% higher or 50% lower

Assumptions:

Project duration is two years from start to completion
Gas Distribution work is limited to the relocation of about 2200 ft of gas main; estimate does not include tapping or tanking work which may be required to support the Gas Distribution work
Electric Distribution work is limited to removal of facilities
Service Disconnects are not included in this estimate