



Market Research Services for California High-Speed Rail RFP: R1019

Release Date: January 7, 2020

RFP Closes: February 5, 2020 5PM (PDT)

Electronic Access: via rfpdb.com

Return Response to: contracting@sagentmarketing.com

Contact: contracting@sagentmarketing.com

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PURPOSE

Research Project

Sagent, a marketing and branding subcontractor to the Early Train Operator for California High-Speed Rail, is seeking proposals from qualified research firms to provide qualitative and quantitative research studies to help inform development of High-Speed Rail in California.

Project Background

When Californians voted “yes” to High-Speed Rail more than ten years ago, they were supporting an environmentally clean, fast and efficient High-Speed Rail system that will fundamentally transform how people move around California, put people to work building the system, spur economic growth and new industries, and help achieve our state’s ambitious environmental objectives. In 2019, Governor Newsom redefined the first service priority as the Central Valley from Merced to Bakersfield. Connections will be utilized to extend the reach of California High-Speed Rail north and south in the short term. Ultimately, the system will connect the Anaheim Regional Transportation Intermodal Center in Anaheim and Union Station in Downtown Los Angeles with the Salesforce Transit Center in San Francisco via the Central Valley.

High-Speed Rail will reduce commute times, the number of cars on the road, and the pollution that accompanies single-occupancy vehicles. For many, it will provide access to higher wage jobs, higher education, more affordable housing, job training, and healthcare that is currently beyond reach. A more educated and higher-skilled workforce benefits all Californians. Increased access to education and healthcare supports social justice.

The Early Train Operator (ETO) is charged with designing a service that will attract future customers, supporting this vision.

Description of Research Service Needs

Key to the success of High-Speed Rail is understanding and balancing the service expectations and travel motivators—as well as barriers—of potential customers within the direct service areas and adjacent counties, which include:

- **Central Valley:** Merced, Madera, Fresno, Kings, Kern, Tulare, and Stanislaus counties
- **Valley to Valley, Peninsula:** Santa Clara, San Mateo and San Francisco counties
- **Phase 1 Expansion:** Los Angeles and Orange counties
- **Adjacent Counties:** Santa Cruz, San Benito, Monterey, Contra Costa, Alameda, and San Joaquin

Target customers have very different levels of public transportation availability, experience and use, income, and access to information. We hope to gain a better understanding and define the needs and expectations of potential customers to find an intersection that supports the goals of High-Speed Rail. The project goals are:



1. Define service offerings the ETO will want to offer future customers through primary analyses.
2. Inform service design for train procurement and interior design
3. Inform and test market messaging and brand development

A single contract will be awarded to address all deliverables outlined in the Scope of Work for this contract.

Key Audiences

- Current users of Amtrak San Joaquins line in the Central Valley, and the Capitol Corridor between San Jose and Alameda County.
- Current users of Caltrain commuter rail between San Francisco and the Santa Clara Valley
- Current users of Metrolink commuter rail in Los Angeles and Orange counties
- Commuters between the Central Valley and Silicon Valley
- Commuters between southern Central Valley and Los Angeles
- Frequent users of public transit other than rail
- Potential customers whose primary means of transport is currently car

Given the demographic profile of the geographic region, Spanish language-dominant audiences should be included in-language. While Chinese languages are important for advertising for cultural sensitivity, we may choose to survey them in English since they are largely English-literate. Please include your recommendations and approach to address these residents who rely on these languages.

CONTRACT AWARD SCHEDULE

Publish RFP	1/7/2020
Deadline for Questions	1/20/2020 3PM (PDT)
Required Intent to Propose	1/20/2020 3PM (PDT)
Responses to Questions Provided	1/23/2020*
Proposal Submission Deadline	2/5/2020 5PM (PDT)
Interviews (Optional)	2/17/20
Contract Approval (Tentative)	2/19/20
Services to Begin (Tentative)	Two weeks after contract award
Contract Term	One Year (Maximum)

* Questions submitted sooner may be answered sooner. All parties who have filed an intent to submit will receive responses to all submitted questions by email.

MINIMUM QUALIFICATIONS

Eligibility to respond to this RFP is based on the respondent's ability to meet the minimum qualifications listed below.

- A. The Contractor and the lead researcher must each have a minimum of seven (7) years providing a wide range of market research services. Proposer shall list the number of years of experience.
- B. Proposers must have prior experience conducting multiple marketing research studies with a transportation service focus. Rail specific experience is preferred.
- C. Proposers must have prior experience conducting brand perception research to inform the development of a successful marketing campaign; transportation experience is a plus.
- D. An understanding of and experience in conducting research across California's diverse populations and geographies

BUDGET

A maximum budget of \$120,000 has been established for all deliverables outlined in the Scope of Work. Please see the Evaluation Process and Contracting section for details regarding the Cost Proposal scoring.

SCOPE OF WORK

Task 1. Methodology

Define, design, and recommend research instruments to uncover insights as listed below. A variety of research tools may be utilized, including qualitative and quantitative surveys, focus groups, and/or in-the-moment research. Given the political sensitivity of the California High-Speed Rail project and polarized emotions around it, it is important to approach this survey in a way that will first capture as much relevant information about the respondent's travel habits, opinions and preferences before revealing that this is about High-Speed Rail. When introducing High-Speed Rail, focus on envisioning the completed Central Valley Corridor line fully operational, which will run-round trip from Bakersfield to Madera. Note: a comprehensive Conjoint Analysis is currently being developed separately but a simpler version may also be employed as a research methodology if appropriate.

- a) **Conduct primary research to identify service expectations, satisfaction with existing transportation methods, understand obstacles to adoption, and help define service offerings the ETO will want to offer future customers.** Areas to explore include:
 - **Convenience.** Research indicates that two key obstacles to rail transportation use are that trains do not go where people want them to go and that the current transit options may take longer than driving. Where do potential customers *want/need* to travel, how often, and what are their travel time needs and expectations?

- **Distance to train stations.** Secondary research notes this as another obstacle to rail transportation adoption. At what point is distance to a train station a barrier? If public transportation is limited (as it is in the Central Valley and parts of Los Angeles, for example), how do potential customers plan to get to the train station? (Drive, drop-off, ride-hailing, etc.)
- **Connection expectations and willingness to use.** How can travel be made as seamless as possible? Which types of connections are acceptable to help fill the “first/last mile” distance gaps? At what point are multiple connections a barrier to use?
- **Satisfaction with current methods of transportation.** How satisfied/dissatisfied are travelers with their current mode of transportation to determine what the pain points are and the willingness/unwillingness to adopt an alternative.
- **Current adoption of ridesharing or ride-hailing services.** While widespread in the Peninsula and greater Los Angeles region, secondary data on Central Valley or Adjacent County-specific ridesharing/hailing adoption is minimal; adoption is also changing rapidly in most areas. Ridesharing/hailing services may be able to resolve first/last mile and distance to train station concerns. To what degree is the public aware of and using these services?
- **Defining safety and comfort.** Both safety and comfort are listed as top priorities by travelers but are not well-defined. How do potential customers describe safety and comfort both at the station—including station parking—and on the train? Are definitions different for different traveler groups and in different geographic counties?
- **Understanding the importance of productivity.** The ability to be productive while riding the train is, for many, a key factor. Is productivity a motivating factor in the decision to use High-Speed Rail’s target customers?
- **Trip planning needs.** Do people prefer to conduct trip planning online, via an app, over the phone, or through a third party? How is that different by age, traveler type, or geography? Do potential customers have reliable access to the internet or data plans to conduct travel planning and receive updates online or through apps? (Internet connectivity is of particular importance in the Central Valley.)

b) Inform service design for train procurement and interior design

- What amenities are requested or expected by potential customers (interior design, on board offerings, station offerings) and are they must-haves or nice-to-haves?
- What is the priority and balance between expected amenities and a willingness or ability to pay for them?
- Which amenities would encourage the public to use High-Speed Rail more often?

c) Testing for marketing messaging and brand positioning

We envision two research phases to inform the development of marketing messaging and brand positioning, as well as brand identity.

Phase I – Address attitudes, awareness and obstacles to the adoption of public transportation, specifically High-Speed Rail.

- The statewide use of public transportation in California has not grown since the 1980s. What are the attitudes, awareness, and obstacles to adopting public transport – specifically High-Speed Rail?
 - Can the convenience of a car be overcome by the speed, comfort, safety, value, convenience, and environmental benefits offered by High-Speed Rail? For all travel groups or only for some?
 - How much time does a business, leisure or commute trip currently take travelers door-to-door, and what is their perception of how long it will take with High-Speed Rail?
- Attitudes toward High-Speed Rail
- For those who favor High-Speed Rail, what other experiences or attitudes align that can be tapped into for increasing acceptance?
 - Experience riding High-Speed Rail in other countries?
 - Regular train or transit ridership?
 - Pro-environmental outlook?
 - Time and cost-savings?

Phase II - Testing to inform message and brand development

- Identify critical brand perception and positioning information that can inform the creative expression and messaging of a powerful brand campaign.
- Discover how audiences receive information and identify engagement strategies.
- Determine which messages are most likely to resonate with the target market, are perceived as credible, and differentiate High-Speed Rail from its competitors.

Measurements may include:

- Baseline and longitudinal data of awareness, familiarity and perceptions.
- Measurement of the impact and reach of advertising and outreach efforts.



- Establishment of key performance indications (KPIs) that can be used to evaluate changes or influencing factors on audience perceptions.

Task 2. Research Design

- Design and seek approval for the survey instruments ensuring an adequate sample representative of current rail or public transportation customers and potential customers within the geographic areas specified.

Task 3. Conduct Research

- Plan and oversee the research execution timely and without bias.
- **Timing:** It is desired that the survey take place starting in April, to avoid heavy media messaging related to the California primary elections and U.S. Census.

Task 4. Insights and Outcomes

- Analyze data and extract top-line findings, trends and feedback.
- Provide summary reports by task and deliverable of key insights and recommendations.
- Provide a high level end report summarizing all insights and recommendations.
- Provide any survey questionnaires and/or transcripts of focus groups, as applicable.

QUESTIONS REGARDING THE RFP

Direct all inquiries regarding the proposal process or proposal submissions by **Monday, January 20, 2020 3PM (PDT)** to: Contracting@SagentMarketing.com

Questions submitted sooner may be answered sooner. All parties who have filed an intent to submit will receive responses to all submitted questions by email.

This solicitation is not made by either the California High-Speed Rail Authority, nor the Early Train Operator and **absolutely no contact or inquiry is to be made to these organizations regarding this RFP. Any attempt to do so will result in disqualification.**

REQUIRED INTENT TO PROPOSE

Notify Sagent by Monday January 20, 2020 3PM (PDT) of your intent to propose to be eligible to receive future notices or addenda. Send your intent to propose email notification to Contracting@SagentMarketing.com.



RFP ADDENDA

RFP addenda, if any, will be emailed to all proposers who have filed their intent to bid by {Date}.

GENERAL

Any cost incurred by respondents in preparing or submitting a proposal, or participating in an onsite interview shall be the respondents' sole responsibility.

All responses, inquiries or correspondence relating to this RFP will become the property of Sagent.

USE OF VENDORS

Any additional resources the researchers need (e.g. Spanish translation; list services) will need to be thorough a vendor relationship. Subcontractors are not allowed. A not-to-exceed value of hard costs should be provided in the cost proposal.

PROPOSAL CONTENTS AND FORMAT REQUIREMENTS

Each response to this RFP shall include the information described in this section provided in the following format. Provide the information in the specified order and as clearly and concisely as possible. Failure to include all of the elements specified may be cause for rejection. Additional information may be provided but should be succinct and relevant to the goals of this RFP. Please note page limits where indicated.

Submissions are electronically provided. Please clearly identify each section as specified below.

Cover Letter – 1 Page

Include the full legal name of the Contractor responsible for executing the contract, type of entity, any relevant certifications, and Federal Tax ID#. The letter must be signed by a principal or authorized officer who may make legally binding commitments for the entity. Unsigned submissions will be rejected.

Please include the following in your cover letter:

- Date
- Telephone number
- Business Address
- Name and title of person authorized to bind the firm in contract (typed)
- Email address
- Signature of Authorized Person

TECHNICAL PROPOSAL

A. Executive Summary – 2 Pages

Proposers must briefly summarize relevant experience and expertise as it relates to the scope of the project and the minimum and preferred qualifications set forth. It is strongly suggested that proposers address each minimum and preferred qualification point by point.

B. Company Profile – 3 Pages

Proposers should provide relevant information about their company, its history, the breadth and depth of services offered, and a succinct overview of experience in research development and execution, especially in the context of transportation service needs. Please include the company's overall service approach.

If vendors are proposed, please provide a summary of the firm, their experience and expertise, and their unique contribution to the project.

C. Assumptions

Proposers must list any assumptions that your company has made that may significantly affect this proposal.

These assumptions may relate to anything that is not explicitly mentioned. For example, list any assumptions related to the specified timeframes, the involvement of Sagent personnel, or technological issues that were not specifically mentioned in the RFP document should be listed.

D. Project Approach and Detailed Project Plan

Proposers must describe their company's project approach and explain the methodology to this project based on the information provided in the RFP and Scope of Work. Proposers must provide a detailed project plan including a work plan timeline by task. In the timeline, provide tasks and subtask details for each stage of the project as well as project deliverables. Please include assumptions, including expected involvement of Sagent team members. Proposers should be sure to address their process for developing and analyzing qualitative and quantitative research, access to reliable sources of consumer contacts for representative samples, and approach to contacting research respondents and receiving feedback.

Additional research approach options to achieve our stated objectives are welcome. These additional options should be separately identified and that may or may not be approved. The proposal will be scored based on the scope of work as outlined.

E. Proposed Team

Proposers must provide resumes, relevant experience and project roles of the proposed team member(s) including their experience with similar projects in transportation and/or rail services. Identify the lead researcher and the project lead and detail their qualifications on related projects. Specify which projects included in the work samples each team member contributed to.



Limit resumes to 2 pages.

Include an **Organizational Chart** clearly indicating reporting relationships.

Note: Any changes to the proposed team after contract award must be submitted to and approved in advance by Sagent.

F. Acceptance of Terms and Conditions

Proposers must acknowledge acceptance of the Sagent's Contractor Agreement, attached hereto, or note change requests or exceptions.

G. Work Samples – 5 Pages

Proposers must detail 3-5 examples of completed work for an engagement of a similar size and scope within the last five years. Confidential information may be redacted where necessary. Include the goal, challenges and how you overcame them, insights revealed, and any pertinent results.

H. References

Provide the name, address, email address, and telephone number of at least three (3) references from previous clients that worked with your firm on similar projects. At least one reference must be from a project completed at least three years ago.

I. Additional Information – 2 pages

Proposers must provide any additional information considered essential to the proposal and not specifically requested in other sections. If there is no additional information to present, please state in this section: "There is no additional information we wish to present."

COST PROPOSAL

J. Cost Proposal Information

Proposers must provide a cost proposal for the project along with any explanatory information regarding the cost and/or cost structure listing

- Hours by task and staff
- Hard costs by task, listing major milestones by which success of the task can be measured.

All hard or direct costs over \$200 that are expected to be incurred during the project must be clearly identified. Please use the Attachment 1 Cost Proposal Worksheet to detail personnel, hours per title, and hourly rates for your firm on the proposed project, as well as hard and direct costs for your firm and vendors.

EVALUATION PROCESS AND CONTRACT AWARD

A single contract will be awarded for all tasks outlined in the Scope of Work.

1. Each proposal will be checked for specified formatting and the presence/absence of required information. Proposals that do not provide requested information may be rejected as non-responsive.
2. Proposals that contain false or misleading statements, or which provide references, which do not support an attribute or condition claimed by the proposer, shall be rejected
3. A total of 150 points are possible for the combined Technical and Cost Proposals. To have a Cost Proposal reviewed, proposers must score at least 75 points on the Technical Proposal. Points for Cost Proposals will be allocated to all proposers with at least 75 points as outlined below:

Cost Points

Proposers will be awarded Cost Points as follows:

- 1) Lowest cost proposal is awarded the maximum cost points.
- 2) Other proposals are awarded cost points based on the following calculation:

Other Proposer's Cost Points = (factor*) X maximum cost points

* factor is the Lowest Proposer's cost divided by Other Proposer's cost

EXAMPLE

Lowest cost proposal = \$10

Other proposal = \$12

Maximum cost points = 30 cost points

factor = \$10 ÷ \$12 = .83

Cost Points Calculation for Other proposal

.83 X 30 cost points = 25 cost points

Final Cost Points Awarded

Lowest cost proposal receives 30 cost points

Other cost proposal receives 25 cost points

Representatives of Sagent will evaluate proposals to determine the effectiveness of the proposal in meeting Sagent's requirements. In addition to the materials provided in the proposals, Sagent may request additional information for clarification purposes.

Factors that will be used to evaluate information include, but are not limited to:

- The proposer's ability to demonstrate its capacity to fulfill the requirements stated in the RFP;
- Cost of services;
- Quality and experience of the proposed team and demonstrated understanding of the project expectations; and
- Completeness of proposal and inclusion of all requested information.



Any contract resulting from this RFP will be awarded to the proposer whose proposal, in the opinion of Sagent, offers the greatest overall benefit to Sagent when considering the total value to be delivered, including, but not limited, to the quality of professional services offered.

Sagent reserves the right to accept or reject any or all responses, make one award, or make no award, and/or waive an immaterial deviation in a proposal at Sagent's sole discretion.

If, during the negotiations, Sagent determines at its sole discretion that a satisfactory agreement is not possible or is unlikely, Sagent may end negotiations and enter into negotiations with another proposer or pursue other alternatives, whichever is in its best interest.

Any contract awarded pursuant to this RFP will incorporate the requirements and specifications contained in the RFP, as well the contents of the proposer's proposal as accepted by Sagent.

SAGENT'S TERMS AND CONDITIONS

Sagent's standard terms and conditions for professional services agreements shall be incorporated into the agreement resulting from this RFP; please refer to Attachment 3.

ERRORS AND OMISSIONS

If the proposer discovers any discrepancy, error, or omission in this RFP or any attachments, Sagent shall be notified immediately through the RFP contact, and a written clarification/notification will be issued to all proposers who have signaled an intent to propose. No proposer will be entitled to additional compensation for any error or discrepancy that appears in the RFP.



ATTACHMENT 1

Cost Proposal Worksheet

Cost Proposal
Agreement #: R1019
DATE
Attachment 1
Page# of##

ATTACHMENT 1
COST PROPOSAL WORKSHEET
COVER PAGE (GRAND TOTALS OF PRIME + ALL VENDORS)

GRAND TOTAL BREAKDOWN (PRIME + ALL SUBS)	
CONTRACTOR	\$
VENDOR 1	\$
VENDOR 2	\$

Additional lines may be added as needed.

Cost Proposal
Agreement #: R1019



ATTACHMENT 1
COST PROPOSAL WORKSHEET

CONTRACTOR:

Direct Labor Costs			
Position Titles that apply, and names	HOURS	RATE*	TOTAL
Subtotal – LABOR COST	Hrs.		
HARD COSTS (Except Labor)			
			TOTAL
Subtotal – NOT-TO-EXCEED HARD COSTS			
DIRECT COST (Except Labor)			
Subtotal – NOT-TO-EXCEED DIRECT COSTS			
CONTRACTOR TOTAL COST			

*Labor Rates shall include indirect costs (such as overhead, fringe, and any other items), fee/profit and any other applicable costs to be charged to Sagent for this agreement.

**Travel, Transportation and subsistence costs shall not exceed rates authorized to be paid to non-represented state employees under current CalHR rules.



Cost Proposal
 Agreement #: R1019
DATE
Attachment 1
 Page# of##

**ATTACHMENT 1
 COST PROPOSAL WORKSHEET**

VENDOR

HARD COSTS		
		TOTAL
Subtotal – NOT-TO-EXCEED HARD COSTS		
DIRECT COSTS		
Subtotal – NOT-TO-EXCEED DIRECT COSTS		
VENDOR – TOTAL COST		

* Travel, Transportation and subsistence costs shall not exceed rates authorized to be paid to non-represented state employees under current CalHR rules.

**Create Additional Cost Proposal Worksheets for each Vendor.



ATTACHMENT 2

Proposal Scoring Sheet

Proposal Scoring Sheet
 Agreement #: R1019
 DATE
Attachment 2

Proposal Scoring Sheet
Market Research Services for California High-Speed Rail

Contractor/Company Name _____

To have cost proposal reviewed, proposers must score at least 75 points on the Technical Proposal. Points for Cost Proposals will be allocated to all proposers with at least 75 points as outlined in the Evaluation Process and Contract Award Section.

Technical Proposal Criteria	Potential Points	Points Scored
Clear, Concise Proposal and Format	5	
Company Experience	15	
Lead Researcher Experience	10	
Project Manager Experience	10	
Work Examples	25	
Proposed Approach	40	
References	Pass/Fail	
Total Technical Proposal Sub Total	105	
Cost Proposal	25	
Technical and Cost Proposal Sub Total	130	
Oral Interview (If needed)	20	
Total Potential and Scored Points	150	



ATTACHMENT 3
SUB-SUBCONSULTANT AGREEMENT



SUB-SUBCONSULTANT AGREEMENT

This Agreement is made between ProProse LLC dba Sagent, ("AGENCY"), with a principal place of business at 2215 21st Street, Sacramento CA 95818, and _____ ("SUB-SUBCONSULTANT"), with a principal place of business at _____. Individually, AGENCY or SUB-SUBCONSULTANT may be referred to as PARTY and collectively as PARTIES.

1. SERVICES TO BE PERFORMED

AGENCY agrees to retain SUB-SUBCONSULTANT and SUB-SUBCONSULTANT agrees to serve AGENCY upon the terms and conditions set forth in this agreement, as a SUB-SUBCONSULTANT under AGENCY'S contract with DB Engineering & Consulting USA Inc., Number **DB/SMI 2018-003DB**

SUB-SUBCONSULTANT will provide the services of its employees or contract personnel and will not substitute any other person(s).

The Scope of Work and Cost covered by this Agreement are attached and incorporated as Attachment A.

2. TERM OF AGREEMENT

The contract term shall begin on _____ with execution of this Agreement and continue until _____ or until terminated by either party as provided in "Termination" paragraph below.

3. PAYMENT

In consideration for the services to be performed by SUB-SUBCONSULTANT, AGENCY agrees to pay SUB-SUBCONSULTANT as detailed in Attachment A. SUB-SUBCONSULTANT will be responsible for travel costs incurred to complete the work unless specifically approved in advance. Out-of-pocket or travel costs will only be considered for reimbursement when AGENCY can bill its client for any applicable costs, and then will be billed at the rates allowed in AGENCY's contract with its client.

3. BILLING

SUB-SUBCONSULTANT shall submit invoice to AGENCY monthly for work performed in the preceding month period. Payment will be made to SUB-SUBCONSULTANT within seven days of payment to AGENCY by its client. All necessary documentation for pre-approved expenses must also be included with the invoice.

4. INDEMNIFICATION AND HOLD HARMLESS

SUB-SUBCONSULTANT shall indemnify and hold harmless AGENCY of, from and against all claims of liability based upon the negligent actions, errors and omissions of SUB-SUBCONSULTANT, and



all of AGENCY'S expenses, including reasonable attorney's fees, arising out of or incident to such actions, errors and omissions. Such indemnity shall extend exclusively to AGENCY'S direct damages resulting from the aforesaid actions, errors and omissions of SUB-SUBCONSULTANT and SUB-SUBCONSULTANT shall in no event be liable to AGENCY for any indirect or consequential damages as a result of SUB-SUBCONSULTANT'S performance of this Agreement. Similarly, AGENCY shall indemnify and hold SUB-SUBCONSULTANT harmless from and against all claims of liability based upon the negligent actions, errors and omissions of AGENCY, and all of SUB-SUBCONSULTANT'S expenses, including reasonable attorney's fees, arising out of or incident to such actions, errors and omissions.

5. CONFIDENTIAL INFORMATION

Either PARTY (RECEIVING PARTY) from time to time in the course of performing services as provided herein may gain access to trade secrets and/or confidential business information of other PARTY (DISCLOSING PARTY), potential clients and/or clients of DISCLOSING PARTY.

Examples include but are not limited to: Technical and business information relating to DISCLOSING PARTY'S proprietary ideas, patentable ideas copyrights and/or trade secrets; existing and/or contemplated products and services; schematics; research and development; metrics and measurement systems for measuring outcomes, social media, or other marketing activity; production techniques; costs; profit and margin information; billing rates; finances and financial projections; policies and procedures; names and contact information of current or potential clients, promotional partners, vendors or other subcontractors proposals and preparation materials for proposals; confidential information received from clients, prospective clients, promotional partners, vendors or other subcontractors; marketing; and current or future business plans and models, regardless of whether such information is designated as "Confidential Information" at the time of its disclosure.

In addition to the above, Confidential Information shall also include, and the RECEIVING PARTY shall have a duty to protect, other confidential and/or sensitive information which is (a) disclosed by DISCLOSING PARTY in writing and marked as confidential (or with other similar designation) at the time of disclosure; and/or (b) disclosed by DISCLOSING PARTY in any other manner and identified as confidential at the time of disclosure and is also summarized and designated as confidential in a written memorandum delivered to RECEIVING PARTY within thirty (30) days of the disclosure.

RECEIVING PARTY shall use the Confidential Information only for the purpose of performing work under this Agreement with DISCLOSING PARTY.

RECEIVING PARTY shall limit disclosure of Confidential Information within its own organization to those having a need to know and shall not disclose Confidential Information to any third party without the prior written consent of DISCLOSING PARTY. RECEIVING PARTY shall have satisfied its obligations under this paragraph if it takes affirmative measures to ensure compliance with these confidentiality obligations by those who are permitted access to the Confidential Information.



This Agreement imposes no obligation upon RECEIVING PARTY with respect to any Confidential Information (a) that was in RECEIVING PARTY'S possession before receipt from DISCLOSING PARTY; (b) is or becomes a matter of public knowledge through no fault of RECEIVING PARTY; (c) is rightfully received by RECEIVING PARTY from a third party not owing a duty of confidentiality to the DISCLOSING PARTY; (d) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, DISCLOSING PARTY; or (e) is independently developed by RECEIVING PARTY.

DISCLOSING PARTY warrants that it has the right to make the disclosures under this Agreement.

This Agreement shall not be construed as giving the RECEIVING PARTY any rights, license or authority in or to the information exchanged, except the limited privilege to use the Confidential Information to perform the work contemplated by this Agreement. Furthermore and specifically, no license or conveyance of any intellectual property rights is granted or implied by this Agreement.

6. INDEPENDENT CONTRACTOR STATUS

This agreement does not establish a partnership, a joint venture, an employer-employee relationship, or any agency relationship between the parties. SUB-SUBCONSULTANT is an independent CONTRACTOR, and neither SUB-SUBCONSULTANT nor SUB-SUBCONSULTANT'S employees or contract personnel are, or shall be deemed, AGENCY'S employees and shall not be considered under the provisions of this agreement or otherwise as being entitled to participate in any benefit plans, arrangements or distributions by AGENCY pertaining to or in connection with any pension, stock, bonus, profit-sharing or other benefits for the regular employees of AGENCY, nor shall AGENCY have any responsibility for withholding employment-related taxes, worker's compensation or other elements of an employment relationship.

In its capacity as an independent CONTRACTOR, SUB-SUBCONSULTANT agrees and represents, and AGENCY agrees, as follows:

- SUB-SUBCONSULTANT will provide all equipment, facilities and other resources needed to perform the work.
- SUB-SUBCONSULTANT will at all times have exclusive control of and responsibility for its work force and all working conditions. SUB-SUBCONSULTANT will be solely responsible for all employment-related taxes and other charges relating to its work force, and for any benefits for which its work force may be eligible, whether required by law, contract or otherwise.
- SUB-SUBCONSULTANT has the right to perform services for others during the term of this Agreement. However, SUB-SUBCONSULTANT will not participate in activities that present a conflict of interest for the scope of work in this agreement, except with advance notice and agreement by AGENCY.
- Neither SUB-SUBCONSULTANT nor SUB-SUBCONSULTANT'S employees or contract personnel shall be required by AGENCY to devote full time to the performance of the



services required by this Agreement.

- The principal goal of all work to be completed under this Agreement is to successfully meet the business needs of AGENCY and its client, and SUB-SUBCONSULTANT will conduct the work in a manner to maximize these outcomes. SUB-SUBCONSULTANT shall use its independent, professional judgement and expertise in executing the work.

7. REFERENCE TO AGENCY'S EXISTING CONTRACT WITH CLIENT

This Agreement is subject to the terms and conditions of AGENCY'S contract with the Client. Any provisions of the prime contract that are explicitly required to be incorporated into subcontracts are incorporated by this reference. Without limiting the applicability of any provisions of AGENCY's contract with the client, SUB-SUBCONSULTANT's attention is directed to the provisions of Attachment B, which is incorporated.

8. TERMINATION

Either party may terminate the agreement under the following situations:

- a. Without cause on thirty days' written notice.
- b. Immediately in the event of bankruptcy of the other.
- c. In the event of material breach by the other, upon written notice and a reasonable opportunity to cure, unless the breach is not curable.
- d. Immediately in the event of termination of AGENCY's contract with its client for any reason.

9. ENTIRE AGREEMENT

This agreement constitutes the entire agreement of the parties and may not be changed or modified except by an agreement in writing signed by both parties.

10. APPLICABLE LAW AND ARBITRATION

The parties agree that their Agreement shall be governed by the laws of California and that all claims and disputes arising out of or in connection with their Agreement shall, except if submitted to arbitration as provided for herein, be adjudicated exclusively in the Courts of Sacramento, California. AGENCY and SUB-SUBCONSULTANT each consent to the jurisdiction of the Courts of Sacramento, California. Service of process by certified or registered mail, return receipt requested shall be sufficient to commence suit and AGENCY and SUB-SUBCONSULTANT each waive any right to personal service of process.

If either party so directs, any controversy or claim arising out of or related to this Agreement or the performance or breach hereof shall be resolved in Sacramento, California by binding arbitration in accordance with the rules and procedures then obtaining of the American Arbitration Association. However, if the amount and substance of any dispute between the



parties is within the jurisdiction of the Small Claims Court, then neither party will be required to submit to arbitration without its consent and the matter may be resolved in the Small Claims Court in Sacramento, California.

11. BUYOUT AND LICENSING

All work performed by SUB-SUBCONSULTANT will be considered “work for hire” for AGENCY, and AGENCY (or AGENCY’s clients, to the extent that AGENCY’s work for the client is considered work for hire) will be, upon completion of work and payment received by SUB-SUBCONSULTANT, the owner of all copyright and other intellectual property rights in the work. To the extent that any work performed is found to not be “work for hire,” SUB-SUBCONSULTANT assigns AGENCY and/or its clients, and AGENCY accepts, the copyrights applicable to all work product developed by SUB-SUBCONSULTANT during the course of SUB-SUBCONSULTANT’S performance of projects for AGENCY pursuant to this Agreement, for which payment is received by SUB-SUBCONSULTANT. This includes any work that has been obtained by SUB-SUBCONSULTANT from a third party on AGENCY’S behalf, for which AGENCY has made the payments necessary to enable SUB-SUBCONSULTANT to secure an assignment of copyright from such third party(ies). This assignment conveys to AGENCY all future reproduction rights, including the rights to revise, retouch, alter, edit and resell the work. The copyright assigned to AGENCY shall not be construed to prevent SUB-SUBCONSULTANT from using its overall knowledge and skills on other projects.

The undersigned SUB-SUBCONSULTANT warrants that it is the original author of all work performed under this Agreement and agrees to hold AGENCY harmless against other claims to such ownership. If the copyright to any portion of the work may belong to anyone other than SUB-SUBCONSULTANT and SUB-SUBCONSULTANT contends that AGENCY has failed to make the payments necessary to enable SUB-SUBCONSULTANT to secure an assignment of the copyright, it will be the responsibility and risk of SUB-SUBCONSULTANT to notify AGENCY of these conditions.

12. ASSIGNMENT

Neither party shall assign this agreement without the express consent of the other, and any attempt to do so will be of no effect.

13. LIMITED WARRANTIES

SUB-SUBCONSULTANT. SUB-SUBCONSULTANTSUB-SUBCONSULTANT will perform the services in accordance with the standards and practices of care, skill, and diligence customarily observed by similar firms under similar circumstances at the time the services are rendered. SUB-SUBCONSULTANT warrants that all services will comply with all specifications and/or other requirements set forth in Attachment A.



Name: _____
Title: _____

Date _____

Anne Staines, President
ProProse LLC dba Sagent

Date _____



Attachment A
Scope of Work and Cost

Attachment B to Subcontract between Sagent and _____

This Subcontract agreement is subject to all of the terms and conditions of Sagent's contract with DB Engineering & Consulting USA Inc.:

**CONSULTANCY AGREEMENT FOR THE CALIFORNIA HIGH SPEED RAIL PROJECT
EARLY TRAIN OPERATOR
SUB CONSULTANCY SERVICES,**

Agreement Number: DB/SMI 2018-003

including but not limited to all required flow-down provisions, whether or not specifically reference in this Attachment, and including but not limited to the following provisions:

EXHIBIT A: SCOPE OF WORK

1 BACKGROUND, PURPOSE, DEFINITIONS AND ACRONYMS

1.7. Definitions

Sub-Subconsultant – Any Person with whom the Sub-Consultant has entered into a sub-agreement for any part of the Services, or with whom any Sub-Subconsultant has further subcontracted any part of the Services, at all tiers.

6 PERSONNEL

6.2. If, during the term of this Agreement, the Consultant determines that the performance of any personnel of Sub-Consultant or a Sub-Subconsultant is not acceptable, the Consultant shall notify the Sub-Consultant and give the Sub-Consultant the time which the Consultant considers reasonable to correct such performance. Thereafter, the Consultant may require the Sub-Consultant to reassign or replace such personnel or Sub-Subconsultant. If the Consultant notifies the Sub-Consultant that any personnel or Sub-Subconsultant should be replaced, the Sub-Consultant will use its best efforts to replace such personnel Sub-Subconsultant within ten (10) Business Days of the Consultant's notice.

EXHIBIT B: BUDGET DETAIL AND PAYMENT PROVISIONS

2 INVOICING AND PAYMENT

2.1. For Services satisfactorily rendered in accordance with the terms of this Agreement, and upon receipt and approval of the invoices by the Consultant's Contract Manager, the Consultant agrees to compensate the Sub-Consultant through the payment method set forth in the applicable Task Order. Such payment methods include: (1) cost reimbursable milestones (with ceiling) (2) fixed price milestones as defined in the applicable Task Order or (3) costs paid on a time and material basis. To the extent the volume of any sub-agreement exceeds \$25,000, the Sub-Consultant agrees to compensate all Sub-Subconsultants with the same payment structure of the applicable Task Order. Such requirement shall not apply to the extent the Sub-Subconsultants are independent contractors working on a limited hourly basis only.

2.1.1. No payment shall be made in advance of Services rendered.

EXHIBIT D: SPECIAL TERMS AND CONDITIONS

2 SUB-AGREEMENTS

2.1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Consultant and any Sub-Subconsultants, and no subcontract shall relieve the Sub-Consultant of his or her responsibilities and obligations under this Agreement. The Sub-Consultant agrees to be as fully responsible to the Consultant for the acts and omissions of its Sub-Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of its Sub-Subconsultants and of persons either directly or indirectly employed by the Sub-Consultant. The Subconsultant's obligation to pay its Sub-Subconsultant is an independent obligation from the Consultant's obligation to make payment to the Sub-Consultant. As a result, the Consultant shall have no obligation to pay or enforce the payment of any moneys to any subcontract.

2.3. Unless specifically noted otherwise, any sub-agreement in excess of \$25,000 entered into as a result of this Agreement shall contain all the applicable provisions stipulated in this Agreement or the Pre-Development Agreement.

2.4. The Sub-Consultant shall pay its Sub-Subconsultants within seven (7) Business Days from receipt of each payment made to the Sub-Consultant by the Consultant.

2.5. Any substitution of Sub-Subconsultants must be approved in writing by the Consultant's Contract Manager in advance of assigning work to a substitute Sub-Subconsultant.

3 CONFIDENTIALITY OF DATA

3.1. All financial, statistical, personal, technical, or other data and information relative to the Authority's or Consultant's operations, which is designated confidential by the Authority or Consultant (as applicable) and made available to the Sub-Consultant in order to carry out this Agreement, shall be protected by the Sub-Consultant from unauthorized use and disclosure. Consultant shall protect all such data and information relative to Subconsultant's operations, which is designated confidential by Subconsultant and made available to Consultant from unauthorized use and disclosure, provided that such restriction shall not apply to any use and disclosure by the Consultant solely with respect to the Consultant's performance of its obligations under the Pre-Development Agreement unless agreed differently between the Parties in written form.

3.2. Permission to disclose information on one occasion or public hearing held by the Authority relating to this Agreement shall not authorize the Sub-Consultant to further disclose such information or to disseminate the same on any other occasion.

3.3. The Sub-Consultant shall not comment publicly to the press or any other media regarding this Agreement or the Authority's or Consultant's actions on the same, except to the Consultant's staff, Sub-Consultant's own personnel, including Sub-Subconsultants, affiliates, and vendors, involved in the performance of this Agreement, at public hearings, or in response to questions from a Legislative Committee.

3.4. The Sub-Consultant shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by the Consultant and receipt of the Consultant's written permission.

3.5. Any sub-agreement entered into as a result of this Agreement shall contain all of the provisions of the Confidentiality of Data clause.

4 CONFIDENTIALITY CLAUSE

4.1. The terms and conditions of this Agreement and the work described herein, including communication with third parties, are to be held confidential between the parties to this Agreement and shall not be disclosed to anyone else, except as shall be necessary to effectuate Agreement terms or comply with state or federal law. Any disclosure in violation of this section shall be deemed a material breach of this Agreement.

4.2. Sub-Consultant and Consultant agree to hold Confidential Information in confidence in accordance with the terms of this Agreement and agrees to use Confidential Information solely in accordance with the terms of this Agreement. "Confidential Information" shall include all non-public business-related information, written or oral, disclosed or made available to the Sub-Consultant or Consultant, as the case may be, directly or indirectly, through any means of communication by the Authority, the Consultant or any of their respective consultants, affiliates, or the Sub-Consultant or any representatives of the Sub-Consultant. Aforementioned restrictions shall not apply to any use and disclosure by the Consultant in the context of the Consultant's performance of its obligations under the Pre-Development Agreement unless agreed differently between the Parties in written form.

4.3. Sub-Consultant agrees to include in all subcontracts and enforce the requirements of this Confidentiality Clause. This provision is intended for the benefit of the Authority and the Consultant.

6 CONFLICT OF INTEREST

6.1. The Sub-Consultant and its employees, and all of its Sub-Subconsultants and employees, shall comply with the Authority's Conflict of Interest Code and Organizational Conflict of Interest Policy.

6.2. The Sub-Consultant may be required to submit an Economic Interest Statement (Fair Political Practices Commission's Form 700) from each employee or Sub-Subconsultant whom the Authority's Legal Department and/or Consultant's Legal Department, in consultation with the Consultant Contract Manager (or the Authority if so required), or its designee, determines is a designated employee under the Political Reform Act subject to the requirements and restrictions of the Act. Such determination will be based on the nature of the work to be performed by the employee or Sub-Subconsultant. Each employee and Sub-Subconsultant determined to be a designated employee under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Authority's staff who performs the same nature and scope of work as the Sub-Consultant.

7 SETTLEMENT OF DISPUTES

7.1. The parties agree to use their best efforts to resolve disputes concerning a question of fact arising under this Agreement in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties.

- 7.2. To the extent not inconsistent with law, rules, and regulations, any dispute involving work assigned through a task order that is not disposed of by mutual agreement in Section 7.1 above will be decided by the Consultant's Contract Manager, who may consider any written or verbal evidence submitted by the Sub-Consultant. The decision of the Contract Manager, issued in writing will be the final decision of the Consultant. The final decision of Consultant is not binding on the Sub-Consultant.
- 7.3. To the extent not inconsistent with law, rules, and regulations, any dispute that is not disposed of under Section 7.1 or 7.2 above may be referred to binding arbitration to take place in Sacramento County, California. Any such arbitration proceeding shall be *de novo*.
 - 7.3.1. The Party requesting arbitration shall file notice of the demand for arbitration in writing with the other Party. Within thirty (30) calendar days after delivery of the request for arbitration, the Parties shall seek to jointly appoint an arbitrator. Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. If the Parties are unable to agree upon the selection of the arbitrator, then either party may petition the Superior Court of Sacramento County to select such arbitrator.
 - 7.3.2. Unless the Parties otherwise agree, arbitrations shall be conducted in accordance with the procedures for arbitrations under Public Contract Code sections 10240 et seq. (the "State Arbitration Act"), and implementing regulations set forth in California Code of Regulations, Title 1, Chapter 4, sections 1300 *et seq.*
 - 7.3.3. The decision of the arbitrator shall be based upon the relevant facts, circumstances and equities of the case, as well as the pertinent provision(s) of the Agreement and applicable law, and shall be set forth in writing.
 - 7.3.4. The arbitrator shall not have the power to award punitive damages, rescind or reform this Agreement, or void any limitations on liability contained in this Agreement.
 - 7.3.5. The prevailing party in arbitration shall be awarded its reasonable investigation costs, attorneys' fees, court costs, expert witness costs, consultant's costs, and other reasonable costs attendant to the arbitration. The arbitrator will be specifically required to name the prevailing party pursuant to the award. However, if the award is simply monetary, the award shall be a single lump sum award and shall not separate the damages from the costs.
 - 7.3.6. The decision of the arbitrator shall be binding on the Parties and judgment on the award rendered by the arbitrator may be entered in the Superior Court of California for Sacramento County.
- 7.4. In the event of a dispute, the language contained within this Agreement shall prevail over any other language including that of the bid proposal.

7.5. Neither the pendency of a dispute nor its consideration by the Consultant's Contract Manager will excuse the Sub-Consultant from full and timely performance in accordance with the terms of this Agreement.

12 NONDISCRIMINATION COMPLIANCE

12.1. During the performance of this Agreement, the Sub-Consultant and its Sub-Subconsultants shall not deny the Agreement's benefits to any Person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Sub-Consultant shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

12.4. The Sub-Consultant and its Sub-Subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

16 SURVIVAL

16.1. Subject to Section 16.2, the Sub-Consultant's obligations under Section 3, Confidentiality of Data and Section 4, Confidentiality Clause and any other provisions that impose an obligation of confidentiality and/or nondisclosure shall survive the termination, expiration, and/or end date of this Agreement unless otherwise stated within the provision. Sub-agreements/subcontracts entered into with Sub-Subcontractors/Sub-Subconsultants, regardless of dollar amount, shall contain this provision for the benefit of the Consultant and the Authority.

16.2. The provisions set forth in Section 16.1 shall cease to have any force and effect from the date that is three (3) years after the termination, expiration, and/or end date of this Agreement.

17 EQUIVALENT PROJECT RELIEF

17.1.3. The Sub-Consultant shall ensure that none of the following occur and shall indemnify the Consultant against all claims, proceedings, loss, damage, costs and expenses (including legal costs) suffered or incurred in relation to and to the extent caused by any of the following:

- (a) any breach, non-observance or non-performance by the Sub-Consultant of those of its obligations referred to in Section 16.1.2 (Sub-Consultant's Acknowledgement and Obligations);
- (b) any negligent or wrongful acts, errors or omissions of the Sub-Consultant, any Sub-Subconsultant, or their respective servants or agents which causes, contributes or otherwise gives rise to any breach by the Consultant of any of its obligations pursuant to, or liability under, the Pre-Development Agreement or otherwise gives rise to any other liability on the part of the Consultant to the Authority or any third party; and

(c) any negligent or wrongful acts, errors or omissions of the Sub-Consultant, any Sub-Subconsultant, or their respective servants or agents which prejudices or leads to the diminution or loss of any rights entitlements or other benefits of the Consultant under the Pre-Development Agreement.

19 ANTI-CORRUPTION

19.1. The Sub-Consultant represents and warrants that it will perform, and will ensure that any affiliate of Sub-Consultant and any Sub-Subconsultant will perform, the duties and obligations under this Agreement in compliance with all applicable laws, rules and regulations, including, but not limited to applicable anti-corruption laws. The Sub-Consultant also represents and warrants that it will comply with, and will ensure that its Sub-Subconsultants will comply with, the DB Code of Conduct for Business Partners attached in Attachment 1 to this Exhibit D when performing the duties and obligations under this Agreement. The Sub-Consultant further represents and warrants that:

19.1.1. it will comply with, and will ensure that its Sub-Subconsultant will comply with, the DB Anti-Corruption Memo attached in Attachment 2 to this Exhibit D;

19.1.2. it will promptly report to the Consultant (i) any actual or suspected material breach by it (including its Sub-Subconsultants) and (ii) any requests for bribes or corrupt payments by any person (including any Public Official within the meaning of Attachment 2 to this Exhibit D);

19.1.3. it will keep adequate books, records and accounts for its business in accordance with applicable laws;

19.1.4. it will adequately train its management, employees and Sub-Subconsultants in relation to compliance with applicable anti-corruption laws and will ensure that its management, employees and Sub-Subconsultants will participate - upon demand by the Consultant - in anti-corruption trainings offered by the Consultant.

19.2. A breach of criminal laws (e.g. anti-corruption laws) by the Sub-Consultant (including its Sub-Subconsultants) in connection with the performance of its duties and obligations under this Agreement or an investigation of Sub-Consultant by governmental authorities in relation thereto shall always be deemed a material breach for purposes of this Section 18. In the event that the Consultant has reason to believe that a material breach of a representation and warranty has occurred, the Sub-Consultant shall cooperate fully and in good faith with the Consultant in order to determine whether a material breach has occurred. The Consultant may (either directly or through an auditor) review and audit any books, records, accounts and any other relevant documents of the Sub-Consultant at any time (during the term of this Agreement and until the expiry of the applicable statutory period to maintain the respective books and records) in order to verify the Sub-Consultant's compliance with the representations and warranties under this Section 18. The Sub-Consultant shall make any documents readily available, grant the necessary access to its operations and premises for such audit and provide requested copies of relevant documents.

19.3. In the event that a breach of representations and warranties has occurred, the Sub-Consultant shall – to the fullest extent legally permitted - indemnify, defend and hold harmless the Consultant and its affiliates from and against any and all damages, claims, costs, liabilities, expenses or other losses resulting from or in connection with such breach. Further, in the event that a material breach of representations and warranties has occurred, the Consultant shall have the right to terminate this

Agreement by written notice with immediate effect. Such termination will not affect or prejudice any right to damages or other right or remedy which the Consultant may have pursuant to this Agreement or applicable laws. The Consultant will be entitled to withhold any payments due or outstanding and may set-off such amounts against all damages, claims, costs, liabilities, expenses or other losses resulting from or in connection with such breach.

EXHIBIT E: ADDITIONAL PROVISIONS

4 COORDINATION AND COOPERATION

4.1. The Parties agree to cooperate with each other, and the Sub-Consultant agrees to (and shall make reasonable efforts for its Sub-Subconsultants to) co-operate and co-ordinate with the Consultant's other Sub-consultants as well as the Authority's contractors fairly, reasonably, and in good faith in all respects in connection with this Agreement, and to identify and coordinate its efforts with such person's efforts and interfere as little as possible with each other's activities being undertaken with respect to the development of the System. The Sub-Consultant agrees to perform under this Agreement in such a manner and at such times that the Consultant or any other contractor of the Consultant or the Authority or the Consultant personnel who has work to perform, or contracts to execute on behalf of the Consultant or the Authority, can do so without unreasonable delay.

8 LICENSES AND PERMITS

8.4. The Sub-Consultant and its Sub-Subconsultants shall be licensed for the Work they are conducting if licensing would be required of the Sub-Consultant for that Work.

9 INSURANCE

9.5.2. Duration of Coverage

The Sub-Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by the Sub-Consultant, his agents, representatives, employees or Sub-Subconsultants. The Sub-Consultant agrees to maintain professional liability insurance for a period of no less than three years after completion of the work.

9.5.5. Waiver of Subrogation

Workers' compensation insurance policies must be endorsed to waive the insurer's right of subrogation. All other insurance coverage maintained or procured pursuant to this Agreement, except for professional liability, shall specifically allow the Sub-Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss or, in the alternative, shall be endorsed to waive subrogation against the Authority, the Consultant, their elected or appointed officers, agents, officials, employees and volunteers. The Sub-Consultant hereby waives its own right of recovery against the Consultant and the Authority to the extent such loss is covered by any insurance to be procured under this Section 9, and shall require similar written express waivers and insurance clauses from each of its Sub-Subconsultant.

9.5.14. Sub-Subconsultants

To the extent that the Sub-Consultant engages the services of Sub-Subconsultants, the Sub-Consultant agrees to require the same workers' compensation (not applicable for freelancers or independent contractors with no employees), general liability and auto liability insurance as required of the Sub-Consultant, except as to limits. In addition, the Sub-Consultant shall require any additional insurance relevant to the work and expertise of the Sub-Subconsultant, including professional liability, pollution liability or other forms of coverage as appropriate. Limits shall be at the discretion of the Sub-Consultant, but shall be in accordance with custom and practice as appropriate for the locale and type of work to be performed.

1 FEDERAL REQUIREMENTS

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

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

Notwithstanding anything to the contrary contained in this Agreement, all Federal Railroad Administration (FRA) mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Sub-Consultant shall not perform any act, fail to perform any act, or refuse to comply with any Consultant requests, which would cause the Consultant or the Authority to be in violation of FRA requirements.

4 FEDERAL LOBBYING ACTIVITIES CERTIFICATION

4.4. The Sub-Consultant also agrees that by signing this document, it shall require that the language of this certification be included in all lower-tier Sub-Subcontracts, which exceed \$100,000, and that all such Sub-Subconsultants shall certify and disclose accordingly.

5 DEBARMENT AND SUSPENSION

This Agreement is a covered transaction for purposes of 2 C.F.R. Part 1200. As such, the Sub-Consultant is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689; "Debarment and Suspension," 31 U.S.C. section 6101 note; and U.S. DOT regulations, "Non- procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. Office of

Management and Budget (U.S. OMB) “Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement),” 2 C.F.R. Part 180.

To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Sub-Consultant must verify that each Sub-Subconsultant is not excluded or disqualified in accordance with said regulations by reviewing the “Excluded Parties Listing System” at <http://www.sam.gov/portal/public/SAM/>. The Sub-Consultant shall obtain appropriate certifications from each such Sub-Subconsultant and provide such certifications to the Consultant.

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

5. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
6. Have not had one or more public transactions (federal, state, and local) terminated within the preceding three years for cause or default;
7. Has not been convicted within the preceding three years of any of the offenses listed in 2 C.F.R. section 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period; and
8. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offenses listed in 2 C.F.R. section 180.800.

Should the Sub-Consultant or any Sub-Subconsultant become excluded or disqualified as defined in this section during the life of the Agreement, the Sub-Consultant shall immediately inform the Consultant of this exclusion or disqualification.

The Sub-Consultant shall include a term or condition in the Agreement 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 Sub-Subconsultant will review the “Excluded Parties Listing System,” will obtain certifications from lower-tier Sub-Subconsultants, and will include a similar term or condition in each of its lower-tier covered transactions.

6 SITE VISITS

The Sub-Consultant agrees that FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and for other reasons. If any site visit is made by FRA on the premises of the Sub-Consultant or any of its Sub-Subconsultants under this Agreement, the Sub-Consultant shall provide and shall require its Sub-Subconsultants to provide, all reasonable facilities and assistance for the safety and convenience of FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by the Sub-Consultant or Sub-Subconsultants. All individuals making site visits must comply with the Sub-Consultant’s safety standards. If an individual fails to comply with Sub-Consultant’s safety standards, that individual may be removed from the work site.

8 ENVIRONMENTAL PROTECTION

The Sub-Consultant and any Sub-Subconsultants under this Agreement shall comply with all applicable environmental requirements and regulations, including any amendments, including but not limited to the following:

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

8.2. Clean Water: The Sub-Consultant 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. sections 1251 et seq. The Sub-Consultant agrees to report each violation to the Consultant, and understands and agrees that the Consultant shall, in turn, report each violation to the Authority who shall report as required to assure notification to the FRA and the appropriate EPA Regional Office.

8.3. Energy Conservation: The Sub-Consultant 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. sections 6421 et seq.

8.4. Agreement Not To Use Violating Facilities: The Sub-Consultant agrees not to use any facility to perform work hereunder that is listed on the List of Violating Facilities maintained by the EPA. The Sub-Consultant shall promptly notify the Consultant if the Sub-Consultant or any Sub-Subconsultant 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 the Sub-Consultant's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware.

9 CIVIL RIGHTS

The following requirements apply to this Agreement:

9.1. Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. section 2000d; section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6102; section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. section 12132; Section 504 of the Rehabilitation Act of 1974, as amended, 29 U.S.C. section 794; and 49 U.S.C. section 306, the Sub-Consultant 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, the Sub-Consultant agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

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

9.3. Equal Employment Opportunity: The following equal employment opportunity requirements apply to this Agreement:

1. Race, Color, Religion, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e, the Sub-Consultant agrees to comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," including 41 C.F.R 60 et seq. (which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. section 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 Project. The Sub-Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Sub-Consultant agrees to comply with any implementing requirements FRA may issue.
2. Age: In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. section 623, the Sub-Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Sub-Consultant agrees to comply with any implementing requirements FRA may issue.
3. Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. section 12112, the Sub-Consultant 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. section 794, the Sub-Consultant also agrees that it will comply with the requirements of U.S. Department of Transportation, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Sub-Consultant agrees to comply with any implementing requirements FRA may issue.

The Sub-Consultant 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. section 290 dd, cited in FR-HSR-0009-10-01-06 as sections 290 dd-3 and 390 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Sub-Consultant agrees to comply with applicable federal implementing regulations and other implementing requirements that FRA may issue.

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

10 ARRA FUNDED PROJECT

Funding for this Agreement may be provided through the America Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. All Sub-Consultants, including both prime and Sub-Subconsultants, are subject to audit by appropriate federal or State of California (State) entities. The State has the right to cancel, terminate, or suspend the Agreement if the Sub-Consultant or any Sub-Subconsultant fails to comply with the reporting and operational requirements contained herein.

11 ENFORCEABILITY

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

13 ACCESS AND INSPECTION OF RECORDS

1. In accordance with ARRA sections 902, 1514, and 1515, the Sub-Consultant agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under section 3 or 8G of the United States Inspector General Act of 1978 or his representative to:
 - b. Interview any officer or employee of the Sub-Consultant or any of its Sub-Subconsultants regarding the activities funded with federal funds appropriated or otherwise made available by ARRA.

14 WHISTLEBLOWER PROTECTION

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

1. Gross mismanagement of a contract relating to ARRA funds;
2. Gross waste of ARRA funds;
3. A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
4. An abuse of authority related to implementation or use of ARRA funds; or
5. 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.

The Sub-Consultant agrees that it and its Sub-Subconsultants shall post notice of the rights and remedies available to employees under section 1553 of Title XV of Division A of the ARRA.

15 FRAUD AND FALSE CLAIMS ACT

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

The Sub-Consultant also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by the FRA, the federal government reserves the right to impose the penalties of 18 U.S.C. section 1001 or any other applicable law on the Sub-Consultant, to the extent the federal government deems appropriate.

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

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