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EXEMPT FROM FEES PER
GOVERNMENT CODE §6103

7 Attorneys for Plaintiffs and Plaintiffs
8 JOHN TOS; AARON FUKUDA;
AND COUNTY OF KINGS
9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12 JOHN TOS, AARON FUKUDA, and COUNTY
OF KINGS,
13 Plaintiffs
14 v.
CALIFORNIA HIGH SPEED RAIL Authority *et*
15 *al.*,
Defendants

No. 34-2011-00113919 filed 11/14/2011

Judge Assigned for All Purposes:
HONORABLE MICHAEL P. KENNY
Department: 31

PLAINTIFFS' SUPPLEMENTAL
REQUEST FOR JUDICIAL NOTICE

Date: November 8, 2013
Time: 9:00 AM
Dept. 31
Judge: Hon. Michael P. Kenny

19 Plaintiffs John Tos, Aaron Fukuda, and County of Kings ("Plaintiffs") hereby ask the
20 Court to take judicial notice of the following:

21 1. Under Evidence Code §452(c), of the attached pages from the contract between
22 Defendant California High-Speed Rail Authority ("Authority") and the California Department of
23 Transportation ("Caltrans") for realignment of portions of SR 99. In support of this request,
24 attached hereto as Exhibit A is a true and correct copy said contract excerpt as obtained through
25 a public records request from the Department of Transportation.

26 2. Under Evidence Code §452(c), of the attached page from the contract proposal made by
27 Tudor-Perini-Parsons to the Authority for design and construction of the "CP-1" segment of the

1 Authority's Initial Construction Segment. A true and correct copy of said page, as downloaded
2 from Defendant's official website, is attached hereto as Exhibit B. Plaintiffs also ask that the
3 Court take judicial notice of the fact that the Authority signed the contract with Tudor-Perini-
4 Parsons accepting this proposal on August 16, 2013.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. THE COURT IS ENTITLED TO TAKE JUDICIAL NOTICE OF THE
7 REQUESTED CONTRACT AGREEMENT PROVISIONS.**

8 Under Evidence Code §452, a court is allowed to take judicial notice of enumerated
9 forms of factual or documentary evidence. In particular, under subsection (c), a court may take
10 judicial notice of official acts of the executive department of the United States or of any state.
11 (*Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 911 fn.8.) The contractual agreements
12 Agreement between the Authority and Caltrans and Tudor-Perini-Parsons are official acts of the
13 executive branches of the State of California¹ and are therefore subject to judicial notice. (*E. H.*
14 *Morrill Co. v. State of California* (1967) 65 Cal.2d 787, 794 [court properly took judicial notice
of contracts with the State of California].)

15 **II. THE REQUESTED ITEMS ARE RELEVANT TO THE COURT'S
16 CONSIDERATION OF THE REMEDIES IN THIS CASE.**

17 In addition to being subject to judicial notice, an item for which judicial notice is
18 requested must be relevant in order for judicial notice to be granted. (*People v. McKinzie* (2012)
19 54 Cal.4th 1302, 1326.) The requested items are relevant in that they relates to the question of
20 whether the Authority intends to begin to expend Proposition 1A bond funds towards activities
21 under Streets & Highways Code §2704.08(d) that require the prior approval of the Authority's
finding plan for a corridor or usable segment thereof by the Director of Finance..

22 This, in turn, is relevant to the question of what, if any remedies exist for the Authority's
23 improper submission of an initial funding plan under §2704.08(c) which failed to satisfy the
24 requirements of that subsection.

25 Dated: September 14, 2013

26 ¹ The Authority is part of the California Business, Transportation and Housing Agency within
27 the State of California's executive branch.

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Respectfully submitted,

Michael J. Brady

Stuart M. Flashman

Attorneys for Plaintiffs John Tos et al.

By: *Stuart M. Flashman*
Stuart M. Flashman

Exhibit A

STATE OF CALIFORNIA
STANDARD AGREEMENT

STD 213 (Rev 06/03)

Agreement Number HSR 12-06 - Caltrans 06A1816
Registration Number <i>EP 1271404</i>

- This Agreement is entered into between the State Agency and the Contractor named below:
 STATE AGENCY'S NAME
California High-Speed Rail Authority
 CONTRACTOR'S NAME
California Department of Transportation
- The term of this **January 18, 2013** through **June 2020**
 Agreement is: *30,*
- The maximum amount **\$225,900,000.00**
 of this Agreement is: **Two Hundred Twenty-Five Million Nine Hundred Thousand Dollars**
- 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 – Scope of Work	12 pages
Exhibit B – Budget Detail and Payment Provisions	5 pages
Exhibit C – General Terms and Conditions	1 page
Exhibit D – Special Terms and Conditions	10 pages
Exhibit E – Supplemental Terms And Conditions For Contracts Using ARRA Funds	3 pages
Attachment 1 – Project Map	1 page
Attachment 2 – Scope and Responsibility Summary	4 pages
Attachment 3 – Budget Detail	1 page
Attachment 4 – Hourly Rates	3 pages
Attachment 5 – Draft Union Pacific Railroad Agreement	60 pages

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

CONTRACTOR	
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) California Department of Transportation	
BY (Authorized Signature) <i>Debra Anderson</i>	DATE SIGNED (Do not type) <i>1/24/12</i>
PRINTED NAME AND TITLE OF PERSON SIGNING Debra Anderson, Contract Officer	
ADDRESS 1727 30th Street, MS – 65, Sacramento, CA 95816	

STATE OF CALIFORNIA	
AGENCY NAME California High-Speed Rail Authority	
BY (Authorized Signature) <i>Jeff Morales</i>	DATE SIGNED (Do not type) <i>1-24-13</i>
PRINTED NAME AND TITLE OF PERSON SIGNING Jeff Morales, Chief Executive Officer	
ADDRESS 770 L Street, Suite 800, Sacramento CA 95814	

California Department of General Services Use Only

APPROVED

FEB 19 2013

DEPT OF GENERAL SERVICES

Kyralas

Exempt per:

SR 99 Realignment (Clinton to Ashlan)

Budget Detail

Project Cost Component	Fiscal Years							Total
	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	
Capital Costs								
Construction				\$32,000,000	\$49,000,000	\$30,000,000		\$111,000,000
Right of Way	\$2,000,000	\$11,000,000	\$12,000,000	\$8,000,000	\$3,000,000	\$2,000,000	\$2,000,000	\$40,000,000
Utility Relocation	\$3,000,000	\$2,000,000	\$2,000,000	\$10,000,000	\$13,000,000	\$7,000,000	\$3,000,000	\$40,000,000
Total Capital Costs	\$5,000,000	\$13,000,000	\$14,000,000	\$50,000,000	\$65,000,000	\$39,000,000	\$5,000,000	\$191,000,000
Support / Labor Costs								
Design Phase	\$2,200,000	\$6,700,000	\$5,900,000	\$700,000				\$15,500,000
Right of Way Phase	\$500,000	\$1,800,000	\$2,000,000	\$300,000	\$400,000	\$300,000	\$200,000	\$5,500,000
Construction Phase				\$2,400,000	\$5,800,000	\$4,700,000	\$700,000	\$13,600,000
Total Support / Labor Costs	\$2,700,000	\$8,500,000	\$7,900,000	\$3,400,000	\$6,200,000	\$5,000,000	\$900,000	\$34,600,000
Hazardous Waste Investigation	\$300,000							\$300,000
Total Costs	\$8,000,000	\$21,500,000	\$21,900,000	\$53,400,000	\$71,200,000	\$44,000,000	\$5,900,000	\$225,900,000

Exhibit B

Table 2-4: Potential Construction Subcontract Scopes

Administrative Services/Personnel	Aggregate Suppliers	Archaeological Study
Architectural Specifications	Asphalt Cold Planning	Asphalt/AC Paving
Asphalt/Concrete Crushing	Bridge Joint Seal Assemblies	Bridges/Box Culverts
Concrete Curb, Gutter, and Sidewalk	Concrete Flatwork	Concrete Masonry Unit
Construction Staking/Survey	Contaminated Soil Handling/Removal	Demolition – Building/Site
Dewatering - Wells/Treatment	Earthwork/Excavation	Electrical Work
Erosion Control/Irrigation	Excavation Support	Fencing and Gates
Foundations/Drilling	Guardrail	Hazardous Material Abatement
Hazardous Material Removal	Land Surveying – Right-of-Way	Landscaping/Irrigation
Masonry/Pavers	Material Suppliers – all types	Materials Testing/Inspection
Mechanically Stabilized Earth (MSE) Walls	Metal Fabrication	Minor Concrete/Structures
Miscellaneous Metals/Railing/Stairs	Noise/Vibration Monitoring	Painting
Pile Driving	Portland Cement Concrete Pavement	Post-Tensioning
Precast/Prestressed Concrete	QA/QC Oversight/Inspection	Ready-Mix Concrete Supply
Reinforcing Steel Fabrication/Installation	Roadway/Parking Lot Striping	Signage
Structural Concrete	Structural Steel Fabrication/Installation	Temporary Utilities/Lighting
Trucking/Hauling/Disposal of Material		

(see Table 2-5). SB firms currently committed to TPZP and their respective percentage of the total contract value are shown in Table 2-6.

Ensuring SB Participation

Consistent with Title VI and 49 CFR § 26 best practices, TPZP will break out portions of the work scopes into work items of sizes and scopes to facilitate SB participation. The definition of these work packages will be determined partly through extensive review and the understanding of the more than 900 SB firms that have expressed an interest in working with TPZP by registering through our website. Based on the services and capabilities of SB firms, as determined through our prequalification process, including interviews with SB representatives, our team will specifically design work packages that fit the abilities of the interested SB firms.

These work packages will then be solicited to the contracting community. In some cases, bid packages will be solicited only to SB firms, while other bid packages will be solicited to SBs and other businesses. TPZP has set aside several work scopes that will be targeted directly for SB participation through subcontractors, such as a significant portion of the utilities, paving, demolition, fence, and landscaping requirements. Our bidding process will include a prebid conference to allow interested SBs an opportunity to seek additional information about the work packages up for bid. We will additionally provide a reasonable time frame for bidders, particularly SBs, to respond to our solicitations. We anticipate that our outreach efforts will have also prepared SBs to be ready to participate in our bidding process, but we will continue to offer support as needed to facilitate participation of SBs in the bidding process. This is consistent with best practices regarding gaining SB/DBE/DVBE/MB participation on design-build projects.

Table 2-5: SB Targeted Work Scopes

Divisions of Work	% of Contract	% SB	% Total Contract
Design	7	30	2.10
Quality Control	1	30	0.30
Demolition	3	55	1.65
Utilities/Drainage	5	85	4.25
Earthwork/Grading	10	20	2.00
Trucking	2	50	1.00
Concrete Structures	42	32	13.44
Flatwork/Misc Concrete	0.5	80	0.40
Paving and Improvements	4	60	2.40
Electrical/Mechanical	3	20	0.60
Fence/Guardrail	1.5	60	0.90
Signing/Landscaping/Soundwall	1	60	0.60
Other/Misc Supply	20	3	0.60
TOTALS	100.0		30.24

In some cases, SBs may not be in position to participate on the project due to various challenges, such as lack of capacity, inability to meet insurance and related requirements, or other reasons. To address these challenges, TPZP will implement an SB supportive services program, in collaboration with the CHSRA, with the goal of enhancing SB business growth and development to increase their chances at success both on this project and in the marketplace