

California High-Speed Rail Authority



RFP No.: HSR 14-32

**Request for Proposal for Design-Build
Services for Construction Package 4**

Book II, Part B.1 – SCE Master Agreement

MASTER AGREEMENT
BETWEEN
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
AND
SOUTHERN CALIFORNIA EDISON

PARTIES:

The State of California, acting by and through California High-Speed Rail Authority (“Authority”), which term “Authority” includes its officers, agents, contractors, successors and assigns and other public agencies performing projects in connection with California’s High-Speed Rail Project (“HSR Project”), and Southern California Edison (“Owner”), which term “Owner” includes its officers, agents, contractors, successors and assigns, hereby agree as follows:

RECITALS:

- A. Owner owns, operates or maintains, in the State of California, Facilities as defined herein, of which certain Facilities may be operated under regulations of the California Public Utilities Commission.
- B. The Authority is responsible for the HSR Project, as defined herein, and from time to time the HSR Project requires the Relocation, as defined herein, of Owner's Facilities.
- C. The Authority and Owner desire to enter into a contract establishing the terms and conditions relative to any Relocations requested by the Authority.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this master agreement (“Master Agreement”) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and Owner agree as follows:

- 1. The Master Agreement shall govern exclusively the obligations of the Authority and Owner in regard to Facility Work, as defined herein, in lieu of determination under any other laws, and prior contracts and agreements which would be applicable to this work. The Master Agreement shall apply throughout the State of California to the Authority’s HSR Project. As used in this Master Agreement, the following terms have the following meanings:

- (A) “Facility” or “Facilities” means any Utility owned and operated by Owner.
- (B) “Facility Work” means all services, labor, materials, and other efforts to be provided and performed 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, systems testing, preparation of CADD As-Builts, 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 and construction required for Relocation of Facilities in conjunction with the HSR Project.

- (C) “High-Speed Rail Property” means any real property or an interest therein, including any right-of-way, previously or hereafter acquired by the Authority.
- (D) “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.
- (E) “Notice to Owner” means a formal written notice to relocate.
- (F) “Relocation” means removal, relocation, abandonment, protection or any other rearrangement of Owner's Facility as requested by the Authority to accommodate the Authority's HSR Project, which may include obtaining replacement property rights if required. Relocation shall include, but not be limited to: preparation and submission by Owner and approval by the Authority of relocation plans or drawings sufficiently engineered to allow construction of the requested Relocation; compliance with CPUC Rules as defined in Section 20, and a detailed estimate by Owner of the actual and necessary cost of the requested Relocation.
- (G) “Utility” means Owner's electric, gas, and telecommunication Facilities, and communications associated therewith. The necessary appurtenances to each Facility shall be considered 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 types of facilities.
- (H) “Wasted Work” means design or construction work performed by Owner, upon written direction from the Authority, for a Relocation rendered useless or unnecessary as a result of the Authority's cancellation and/or scope of changes as agreed by both parties of the HSR Project. This term includes any other design or construction work that is needed to accomplish the scope of work for the Relocation and is subsequently rendered unnecessary at some later date.

- (I) “Betterment” means any upgrading of a Facility that is not attributable to the construction of the HSR Project and is made solely for the benefit and at the election of Owner, that results in an increase in the capacity, productivity, efficiency, strength or quality of the Relocated Facility over that which was provided by the existing Facility. As employed herein, “Betterment” does not include increases in capacity, productivity, efficiency, strength or quality of a relocated Facility that are the result of changes in manufacturing standards, regulatory requirements, attributes of the relocation areas, and/or Owner’s current standard specifications including improvements in technology, engineering, fabrication or production. For purposes of this Agreement, the Owner’s current standards are those existing at the time of the issuance of the Notice to Owner.
- (J) “Party” refers to the Authority or the Owner, as the context may require and “Parties” means the Authority and the Owner, collectively.
- (K) “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). “Private Right-of-Way of Owner” shall also mean a property right held by Owner that has been acquired through prescription or otherwise, where the Owner’s normal and ordinary business records demonstrate installation, maintenance and/or use of the Facility for a period of five (5) years or more from the time of the proposed Facility Work that is subject to this Agreement.
- (L) “Railroad Right-of-Way” means the right-of-way of any rail line registered with the California Public Utilities Commission, except for High-Speed Rail right-of-way.
- (M) “Hazardous Material(s)” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law.
- (N) “Utility Agreement” means an agreement between the Authority and the Owner, authorizing and providing for the performance of specific work, services and/or the purchase of materials and equipment.
2. The work to be performed under the Master Agreement, as more specifically described in one or more Utility Agreements prepared and executed by the Parties, shall be all work necessary to accomplish Relocation of Owner's existing Facilities as necessitated by the Authority's HSR Project.
3. All work under the Master Agreement shall be preceded by the issuance of a written Notice to Owner by the Authority and the preparation/execution of a mutually-acceptable Utility Agreement by the Parties.

4. The cost of all work to complete the Relocation of Owner's existing Facilities necessitated by the initial construction of the HSR Project shall be calculated pursuant to the provisions of Paragraph 6, below, and shall be performed at the Authority's sole expense.

5. Cost Liability

5.1. After completion of the initial construction of the HSR Project, liability for the cost of Facility Work shall be determined as follows:

- (A) When the Authority requires Owner to remove any Facility lawfully maintained in any High-Speed Rail Property to a location entirely outside High-Speed Rail Property, the Authority shall pay the reasonable and necessary cost of the removal. This includes both the cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.
- (B) When the Authority requires Owner to remove any Facility lawfully maintained outside High-Speed Rail Property to another location entirely outside High-Speed Rail Property, the Authority shall pay the reasonable and necessary cost of removal. This includes the cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.
- (C) If Authority requires the Relocation within its right-of-way of any Facility more than once during a ten-year period, Authority shall pay the cost of that second Relocation, and any subsequent additional Relocations of that Facility within such ten-year period on any subsequent or additional project.
- (D) When the Authority requires a privately owned Facility to relocate within a High-Speed Rail Property any Facility, other than one used solely to supply water, which Facility is lawfully maintained in any High-Speed Rail Property that was not used for high-speed rail purposes at the time the Facility was originally installed, and it is established by the Owner that the Facility is not under express contractual obligation to relocate the Facility at its own expense, the Authority shall pay the cost of the Relocation.
- (E) A permit containing a contractual obligation that was accepted by the Owner for maintenance or minor improvement of the Facility after the property became High-Speed Rail Property shall not constitute a contractual obligation to relocate a Facility at its own expense within the meaning of this section.
- (F) Nevertheless, Owner will be liable for Facility Work where:
 - i. Facility Work is a Betterment (but only for those portions of the Facility Work that are, in fact, a Betterment; the Agency shall remain liable/responsible for those portions of the Facility Work that are not a Betterment); or

- ii. The Owner is unable to produce documentation of Private Right-of-Way of Owner where its Facility is located.

5.2. Following the initial Relocation of Owner's existing Facilities to an area within High-Speed Rail Property (where said Relocation is made in order to accommodate the construction of the HSR Project), Owner may determine that it is necessary or beneficial to further Relocate its Facilities to another portion of the High-Speed Rail Property. In such instance, and upon Owner's request and subject to Authority's written approval, Owner shall pay the reasonable and necessary cost of a Relocation when the Relocation of a Facility is from one point in High-Speed Rail Property to another point in that property, including Relocation in any service road of the High-Speed Rail Property or from one point of crossing of the High-Speed Rail Property to another reasonable point of crossing. This includes the cost of removal and the cost of Relocation to another point in High-Speed Rail Property. Acquisition of new property rights from the Authority is the responsibility of the Owner.

6. Cost of Relocation includes the actual and necessary cost of all engineering, labor and transportation, and all necessary materials exclusive of any dismantled Facilities used in any Relocation, together with reasonable and usual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way involved in the Relocation, except:
 - (A) The Authority shall be entitled to credits as follows:
 - i. The amount of any Betterment to the Facility resulting from such Relocation.
 - ii. The salvage value of any materials or parts salvaged and retained by Owner.
 - iii. If a new Facility or portion thereof is constructed to accomplish such Relocation, an allowance of an amount equal to the same proportion of the original cost of the displaced facility or portion of that facility as the age of the facility bears to the normal expected life of the facility.
 - (B) A credit shall not be allowed against any portion of the cost that is otherwise chargeable to Owner.
7. The Master Agreement does not apply to "Service" facilities for which the Authority is the regularly billed sole customer for the commodity provided, or as defined by California Public Utilities Commission. Where Owner is the owner of a part of, or of a present undivided part interest in, any Facility, the Master Agreement shall apply to the extent of such interest.
8. For each Relocation, the Authority and Owner shall enter into a project specific Utility Agreement setting forth, among other things, the scope (and description) of the Facility Work and the Relocation arrangements between the Parties regarding cost apportionment, billing, payment, documentation, documentation retention, and accounting.

When all or a portion of the Facility Work is to be performed by the Owner, the Owner agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to: (i) perform work with its own forces, or (ii) cause the work to be performed by a contractor, employed by Owner pursuant to a written contract, or (iii) cause the work to be performed through a contract with a qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Owner and the parties' establishment/execution of a Utility Agreement, the Owner shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the schedule identified in the Utility Agreement.

9. The Authority will pay, in its entirety, that portion of the cost of the Relocation constituting Wasted Work.
10. Upon discovery of Hazardous Material in connection with any Relocation, both Owner and the Authority shall immediately confer to explore all reasonable alternatives and agree on a course of action, and Owner shall immediately reschedule the work to complete the Relocation in accordance with a mutually-acceptable schedule and in compliance with existing statutes or regulations concerning the disposition of Hazardous Material.
 - (A) The Authority will pay, in its entirety, those costs for additional necessary effort undertaken by Owner to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such conditions are attributable to Owner's existing installation or operation.
 - (B) Each Party to the Master Agreement 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.
11. 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 the Authority, the Authority 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.

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, the Authority 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, the Authority shall issue, or cause to be issued, to Owner, without charge to Owner or credit to the Authority, appropriate replacement rights in the new location mutually acceptable to both the Authority and Owner for those rights previously held by Owner in its existing Private Right-of-Way. In discharge of the Authority'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 the Authority, the Authority 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 the Authority, Owner shall (subject to compliance with applicable laws and regulations) subsequently convey to the Authority, or its nominee, within High-Speed Rail Property, all of its corresponding right, title and interest within Owner's existing Private Right-of Way so vacated.

If the existing Private Right-of-Way of Owner includes fee title, the Authority shall acquire from Owner, for just compensation under State law, those property rights required by the Authority 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.

If any replacement real property rights are required in Railroad Right-of-Way, then the Authority will make reasonable efforts to obtain those rights for the Owner. Nevertheless, if Authority cannot obtain those replacement real property rights Owner shall obtain those rights, at the Authority's cost and expense. Notwithstanding any provision herein to the contrary, in the event that the Authority requests Owner to obtain replacement real property rights in or over a Railroad Right-of-Way, Owner makes no representation, covenant or commitment concerning its ability to obtain said rights, the timing for obtaining said rights, or the costs associated with obtaining said rights. Moreover, Owner shall not be responsible for any delays in the Authority's schedule that are caused by (or associated with) Owner's pursuit of the required rights in Railroad Right-of-Way.

12. The Master Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties. None of the rights, obligations or interests of either Party under the Master Agreement shall be assigned, in whole or in part, by operation of law or otherwise, without the written consent of the other Party, not to be unreasonably withheld, in the form of a formal written amendment, except that either Party may assign the Master Agreement to its successor or any entity acquiring all or substantially all of such Party's assets.
13. Either Party, upon sixth (6) months written notice, may terminate the Master Agreement, except that, notwithstanding that termination, the provisions of the Master Agreement shall remain in full force and effect with respect to any Relocation of Facilities required under a Utility Agreement executed by the Parties prior to the Master Agreement termination.
14. Time shall be of the essence of the Master Agreement.
15. No State or Federal funds or resources are allocated or encumbered as against the Master Agreement and the Authority's obligations and duties expressed herein are conditioned upon the passage of the annual State Budget Act and the allocation of funds by the California Department of Finance and the encumbrance of funds under a project-specific Utility Agreement.

Parties agree that Utility Agreement(s) and other agreements requiring payment from the Authority may be subject to additional State and Federal requirements.

16. The Master Agreement may be amended, changed or altered by mutual consent of the Parties in writing.
17. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
18. The Master Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations. To the extent that any conflict between the terms of this Master Agreement and any subsequent Utility Agreement, the terms of the Utility Agreement shall govern.
19. Neither Owner nor the Authority (the “non-performing party”) shall be liable to the other for any failure to perform under this Master Agreement or any Utility Agreement to the extent such performance is prevented by any occurrence beyond the reasonable control of the non-performing party (a “Force Majeure Occurrence”), but only to the extent that the non-performing party did not cause the Force Majeure Occurrence or that by exercise of due foresight such party could not reasonably have been expected to avoid and that the party is unable to overcome by the exercise of due diligence; provided that the non-performing party claiming the excuse from performance:
 - 19.1. Promptly notifies the other party of the Force Majeure Occurrence and its estimated duration,
 - 19.2. Uses reasonable efforts to mitigate the effects of the Force Majeure Occurrence, and
 - 19.3. Resumes performance as soon as reasonably practicable after the Force Majeure Occurrence ends.

A Force Majeure Occurrence includes, without limitation: (i) an act of civil or military authority, (ii) an act of God, epidemic, blockade, rebellion, war, riot, act of terrorism or civil commotion, fire, earthquake, unusually severe weather conditions, flood or inundation, power blackout or natural catastrophe, (iii) material or facility shortages or unavailability, (iv) actions or inactions of legislative, judicial, or regulatory agencies of competent jurisdiction, including without limitation, any failure to obtain, delay in obtaining, or revocation of, any permit, license or other governmental approval or clearance or the conduct of any governmental review, (v) discovery at, near or on the site of any archaeological, paleontological, cultural, biological or other protected resources, provided that the existence of resources was not disclosed in this Master Agreement or a relevant Utility Agreement, (vi) any lawsuit seeking to restrain, enjoin, challenge or delay construction of the HSR Project or the granting or renewal of any governmental approval of the HSR Project, (vii) any strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout or other similar occurrence affecting the HSR Project.

If any such event of Force Majeure Occurrence occurs, if requested by the Authority, Owner and the Authority will meet and confer to discuss what additional efforts are mutually-acceptable to reduce impact to the schedule.

20. As described in Recital A above, the Authority understands that Owner is a public utility and is subject to regulation by the California Public Utilities Commission for certain actions and operations. The Authority further understands that Owner is required to comply with all applicable orders, rules, regulations, policies and administrative practices (“CPUC Rules”) prescribed thereby. The Authority 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.
21. The Southern California Edison Non-Disclosure Agreement between the California High-Speed Rail Authority and Southern California Edison executed on February 2, 2011 and all of the provisions thereof are incorporated into this Master Agreement by this reference.
22. Unless otherwise expressly agreed in writing by the Parties, the Authority shall be responsible at its sole cost and expense for procuring and maintaining all environmental permits and approvals that may be necessary for any Relocation. Moreover, the Parties agree that any costs incurred by Owner in complying with any mitigation plans, standard conditions or requirements pursuant to any such permits or approvals or otherwise shall constitute Facility Work and shall be subject to reimbursement by the Authority in accordance with this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

WITNESS WHEREOF, the Parties hereto have executed the Master Agreement effective the last day and year written below.

SOUTHERN CALIFORNIA EDISON

BY:  DATE: 3/3/15

NAME: Kevin R. Cini

ITS: Vice President

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

BY:  DATE: 3/20/2015

NAME: Frank Vacca

ITS: Chief Program Manager