California High-Speed Train Project

Request for Proposal
for Design-Build Services

RFP No.: HSR 11-16

Book 4, Part E, Subpart 4
Other Third Party Agreements - USBR

ADDENDUM 9

Revision(s)	Date	Description
1	12/14/2012	Addendum 7
2	01/08/2013	Addendum 9

CALIFORNIA HIGH-SPEED RAIL AUTHORITY
AND
BUREAU OF RECLAMATION

MEMORANDUM OF AGREEMENT
AND
REIMBURSEMENT AGREEMENT

This Memorandum of Agreement (Agreement), between the State of California High-Speed Rail Authority (Authority) and the Bureau of Reclamation (Reclamation), a unit of the United States Department of the Interior, is entered into this _____ day of September 2012, pursuant to authorities under the California High Speed Rail Act of 1996 and the Reclamation Act of 1902, 43 U.S.C. Chapter 12, as amended and supplemented. The purpose of this Agreement is to establish a mutual framework and process for the planning, design, engineering, permitting, environmental review, and reimbursement of expenses relevant to the interests of Reclamation that will be necessary for future planning, construction, operation, and maintenance of the California High-Speed Train (HST) System.

SECTION A: BACKGROUND

The Authority proposes to construct, operate, and maintain an electric-powered, steel-wheel-on-steel-rail HST System on more than 800 miles of track, capable of operating speeds of up to 220 mph on dedicated, fully grade-separated tracks, with state-of-the-art safety, signaling, and automated train control systems. The HST System ultimately would connect and serve major metropolitan areas of California, extending from San Francisco and Sacramento in the north to San Diego in the south.

Following programmatic environmental review, the Authority and the Federal Railroad Administration (FRA) approved the HST System for intercity travel in California and selected corridors for project-level studies. Building a system of such magnitude, complexity, and cost is impractical to implement as a singular project. As a result, the Authority divided the HST System into nine project sections allowing a phased system implementation. The project sections include:

1. San Francisco to San Jose,
2. San Jose to Merced,
3. Merced to Sacramento,
4. Merced to Fresno,
5. Fresno to Bakersfield,
6. Bakersfield to Palmdale,
7. Palmdale to Los Angeles,
8. Los Angeles to Anaheim, and
9. Los Angeles to San Diego.

The Authority, as the lead agency under the California Environmental Quality Act (CEQA), and the Federal Railroad Administration (FRA), as the Federal lead agency under the National Environmental Policy Act (NEPA), are both in the process of preparing a joint Environmental

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Impact Report and Environmental Impact Statement (EIR/EIS) for the nine HST project sections identified above. The Authority and FRA will coordinate with the United States Environmental Protection Agency (EPA) regarding compliance under NEPA (42 U.S.C. section 4321 *et seq*), and the requirements under Section 404 (33 U.S.C. 1344) of the Federal Clean Water Act of 1977,as amended.

In April 2012, the FRA invited Reclamation to serve as a cooperating agency, as defined by 40 C.F.R. 1508.5, for the preparation of Environmental Impact Reports and Environmental Impact Statements (EIR/EISs) for the San Jose to Merced and the Merced to Fresno HST sections. Under this EIR/EIS, the geographic interest for Reclamation mainly lies in the Santa Clara Valley and San Joaquin Valley, with additional high interest by Reclamation in the San Luis Reservoir and San Joaquin River geographic areas.

Reclamation has legal jurisdiction over the HST project where it may affect Reclamation lands and facilities, and where Reclamation may issue required approvals and/or permits. Reclamation also agreed to serve as a cooperating agency for the CEQA/NEPA review processes for the San Jose to Merced and Merced to Fresno HST sections.

SECTION B: AGREEMENT PURPOSE

This Agreement establishes a mutual framework and process for the Authority and Reclamation to proceed in their mutual coordination and evaluation of activities associated with the planning, design, engineering, permitting, environmental review, and reimbursement of expenses and activities that may affect Reclamation lands and facilities during the planning and construction of the San Jose to Merced and Merced to Fresno HST sections and other HST projects that later may affect Reclamation facilities. The Authority and its contractors and consultants will be required to interact with Reclamation and its representatives to ensure and verify that the Authority complies with and adheres to the design and construction specifications that are approved by Reclamation during HST project planning, design, and construction.

SECTION C: OBJECTIVES

The objectives of this Agreement are:

1. To provide for permitting, right-of-way acquisition, and construction of the HST sections, principally the San Jose to Merced and the Merced to Fresno section, where the proposed HST corridors cross Reclamation lands and facilities;

2. To provide a common understanding between the Authority and Reclamation on the roles and responsibilities associated with the design and construction of the project to help throughout the process in assuring efficiency of schedules and to avoid unnecessary disruptions in water service to customers of Reclamation and California Department of Water Resources;

3. To provide clear procedures and criteria for determining which HST project expenses incurred by Reclamation are reimbursable; and

4. To provide effective project coordination between the Authority and Reclamation.

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SECTION D: DEFINITION OF TERMS

AUTHORITY: the California High-Speed Rail Authority and its authorized representatives.

AUTHORITY'S CONTRACTOR: Proposer who is awarded the design and construction of any of the HST projects.

COMPLETION OF WORK: All parties to this agreement have met all scope, cost, and schedule components included in this Agreement.

FACILITY: Any pole, pole line, pipe, pipeline, conduit, cable, aqueduct, or other structure used by Reclamation for the storage, conveyance, or supplying of water service to its contractors.

FISCAL YEAR: The Federal fiscal year, the period from and including the first day of October of each calendar year through the last day of September of the following calendar year.

HIGH-SPEED TRAIN: An electric-powered, steel-wheel-on-steel-rail HST System, capable of operating speeds of up to 220 mph on dedicated, fully-grade separated tracks, with state-of-the-art safety, signaling, and automated train control systems.

LOCAL AGENCY: Any city, county, city and county, special district, public recipient, public agency, or any other political subdivision, including joint powers agencies, of the State of California, affected by construction of the HST project.

OBLIGATIONS: All responsibilities included in this agreement.

PARTNER: Any agency signatory to this Agreement. It is not used in the traditional sense in which one partner's individual actions legally bind the other partners.

PARTNERS: The term that collectively references the signatory agencies to this Agreement. The term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner's individual actions legally bind the other partners.

PROJECT: All features required to build the HST project, including:

- Track Structures and Track,
- Stations, Terminals, Intermodal,
- Support Facilities, Yards, Shops, and Administrative Buildings,
- Site work, Right-of-Way, Land, Real Property, Existing Improvements,
- Communications and Signaling,
- Electric Traction, and
- Vehicles (Rail cars and engines).

In addition to these features, the HST project also encompasses the following activities:

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- Completion of designs and specifications for each HST project feature, including special services required for engineering design;
- Acquisition of all necessary lands, easements, rights-of-way, mitigation lands, and excavated material disposal areas;
- Acquisition of all necessary permits and licenses from Reclamation and others; and
- Relocation of utilities impacted by the HST project.

PROJECT FEATURE: A distinct portion of the planning and project development process of this HST project.

PROJECT AREA: The minimum area necessary to construct, operate, and maintain the HST project, including full rights to access the HST project features

TASK ORDER: Order for services placed against an established contract or agreement. Supplementary contractual and obligating document that usually includes task description

UTILITY RELOCATIONS: The preparation of plans and specifications for, and the accomplishment of all alterations, modifications, lowering or raising in place, and/or new construction related to but not limited to existing water storage and conveyance facilities, pipelines, highways, roadways, bridges, public utilities (such as municipal water and sewer lines, telephone lines, and storm drains), aerial or buried utilities including power lines, structures and improvements, as determined by the Authority and Reclamation to be necessary for construction, operation, maintenance, and replacement (OM&R) of the HST project.

SECTION E: SCOPE OF THIS AGREEMENT

The scope of services to be provided by the Authority under this Agreement includes the following:

<u>Scope of Work</u>

1. Coordination with Reclamation on all aspects of the HST project that affects Reclamation lands and facilities and associated infrastructure.
2. Performance of pre-construction field work, including but not limited to acquisition of design data and design criteria for project features, engineering surveys, and geotechnical investigations.
3. Coordination with local, State, and Federal agencies to develop necessary environmental compliance documents as needed for HST project construction, including necessary environmental clearances, site clearing and grubbing activities, and environmental surveys.
4. Pursuing, coordinating, obtaining, and managing all permits (or inter-agency consultations) required for HST project construction. Currently, in addition to permits or licenses issued by Reclamation, permits are or may be required from the agencies listed below. This list is not limited and may expand as additional requirements emerge.

    a. U.S. Army Corps of Engineers (USACE)
    b. United States Fish and Wildlife Service (USFWS)
    c. National Marine Fisheries Service (NMFS)
    d. California State Water Resources Control Board (SWRCB)

e. California Department of Water Resources (CDWR)
f. California Department of Fish and Game (CDFG)
g. State Historic Preservation Officer (SHPO)

5. Coordinating with Reclamation to delineate all soil borrow sites and soil waste or disposal areas that may be located on Reclamation lands, as needed to meet overall project requirements.
6. Obtaining temporary construction easements and right-of-entry permits for all phases of the HST project that affect Reclamation assets.
7. Obtaining agreements from land owners and others for disposal of construction water and spoil material.
8. Preparing draft and final design and specifications for the construction contract(s) that affect Reclamation lands and facilities; coordinating development and review of these documents with Reclamation.
9. Performing construction management, contract administration, inspection services, quality control activities, and engineering support as required, overseeing and administering construction contract work that may affect Reclamation lands and facilities.
10. Interfacing with Reclamation construction management oversight staff to ensure and verify that Reclamation-approved specifications are adhered to and complied with during project construction.
11. Interfacing with the Reclamation Central Valley Operations Office (CVOO), California DWR, and San Luis and Delta Mendota Water Authority (SLDMWA) to ensure that construction activities do not adversely impact water delivery and facility maintenance activities at San Luis Reservoir or Delta Mendota Canal.

Design and Specifications

The design and specifications for project construction that affect Reclamation lands and facilities shall include, but are not limited to, the following issues or content:

12. Surveying, including boundary surveys.
13. Haul road improvements for construction access, including re-grading, turnouts, and truck staging areas.
14. Clearing and grubbing of the construction zone that may adversely affect potential sensitive species habitat and ensure compliance with environmental mitigation measures consistent with environmental documents approved by the Authority and FRA for the HST project.
15. Excavation for track support bent foundations, spread footings, and piles.
16. Structural supports for the track, substructure and superstructure, including piling, particularly in areas where they may affect Reclamation infrastructure.
17. Slope protection details at river and waterway crossings.
18. Details of canal and aqueduct crossings.

Project Management

Project Management activities shall include but are not limited to:

19. Coordinate with Reclamation on all aspects of the project that affect Reclamation assets.

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20. Perform project management, financial tracking, oversight, and support associated with participation and input during meetings, conduct studies or analyses, prepare reports, develop cost estimates, and other activities in support of the HST project.

SECTION F: RESPONSIBILITIES OF THE PARTIES

Authority and Reclamation Joint Responsibilities

Under this Agreement, both the Authority and Reclamation shall be responsible for coordinating the various tasks that affect Reclamation lands, facilities, and infrastructure, and are required to complete and manage the work, and associated mitigation, identified in the Agreement and to complete all tasks defined herein:

1. The Authority and Reclamation will perform task management in a coordinated, interactive manner. To accomplish all work associated with construction of all project features various tasks will require development of interim work products, close coordination, and communications between the Authority and Reclamation.

2. To accomplish individual and coordinated tasks most effectively, in consideration of the many organizations and contractors involved, the Authority and Reclamation shall each identify an individual as the single, mutual Point of Contact with responsibility for coordinating efforts under this Agreement.

3. Any and all work that affects Reclamation assets will be undertaken pursuant to this Agreement and shall be open and subject to inspection by the other Partner or a representative in accordance with applicable laws, rules, and policies during the progress thereof and upon completion.

4. The HST project may be executed pursuant to multiple construction contracts. For those contracts that will affect Reclamation's lands, facilities and/or operations, the Authority and Reclamation shall determine the scope of work to be performed by Reclamation (if any) for each construction contract. Distribution of work may change by mutual agreement of the Parties.

5. The format of deliverables and work products under this Agreement shall be as follows:

    a. Letters and reports including performance, progress, and financial reports shall be prepared using Microsoft Word as the text processing computer application.
    b. Specifications shall be prepared using Microsoft Word.
    c. All spreadsheets or workbook files shall be prepared using Microsoft Excel.
    d. Drawings shall be prepared using AutoCAD 2007, in accordance with the Reclamation drafting standards.
    e. Maps and other GIS products shall conform to ESRI ArcGIS standards.

Authority Responsibilities

6. The Authority shall obtain, by contract or other mechanism consistent with the terms of this Agreement, the services of an experienced consultant or the Authority shall provide

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knowledgeable and experienced staff for obtaining and analyzing design data and design criteria and preparing construction designs and specifications for the HST project work.

7. The Authority shall be responsible for the design of all project features listed in Section E above. Design of the project tasks or elements that affect Reclamation assets shall be accomplished in a partnered, collaborative approach between the Authority and Reclamation. The Authority and Reclamation will coordinate review and comment of these documents and work products.

8. The Authority is responsible for completing all scope-of-work activities identified in Section E above.

9. The Authority agrees to pay the fiscal costs incurred by Reclamation for its review, oversight, commenting, and executions of all pertinent work in support of the engineering, cultural resources compliance, realty services, and environmental compliance activities for the HST project that occur on Reclamation lands or impact Reclamation facilities or operations. Such costs include, but are not limited to, the costs Reclamation incurs for reviewing documents, engineering design, environmental compliance, on-site construction inspection, and monitoring, and development of land use contracts. These costs will include the direct costs of participation by Reclamation staff including salaries, benefits, overhead, travel, and per diem and a proportionate share of Reclamation's administrative, project management, and overhead costs.

<u>Reclamation Responsibilities</u>

10. Reclamation shall provide time and cost estimates for completing reviews of submitted documents (engineering, realty, etc.) to assist the Authority in its budget and schedule management activities.

11. Reclamation shall process right-of-entry requests and other realty documents in accordance with 43 CFR 429 and the Reclamation Manual.

12. Reclamation shall review and comment on Authority engineering drawings, designs, and specifications pertinent to facilities Reclamation owns and/or maintains with regard to HST projects that affect Reclamation facilities.

13. Reclamation shall initiate review and provide preliminary comments and scheduling notes back to the Authority within 15 working days from the time of delivery or presentation of the plans or drawings. Exceeding the timeline for the specific plan review shall be deemed as approval by Reclamation absent Reclamation having previously notified the Authority in writing that additional time is needed for the review.

14. Reclamation shall provide a construction site inspector to observe construction activities that are on or affect Reclamation lands and facilities. The inspector may issue "stop work" orders if, in the inspector's opinion, the activity is placing people or the facilities in immediate jeopardy and shall immediately notify the Authority. Reclamation is not liable for costs associated with such work stoppages if work is stopped for safety or structural integrity reasons.

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SECTION G: TERMS AND CONDITIONS

1. **Reimbursable Costs.** The Authority and Reclamation agree that the cost of Reclamation performing work under this Agreement will be paid by the Authority. Work under this Agreement will be cease upon the completion of the HST project activities that affect Reclamation lands and facilities. The agreement may be subject to modification if work exceeds earlier cost estimates for the requested task(s).

2. **Invoicing.** Reclamation will submit progress reports describing its work and quarterly invoices with appropriate supporting documentation for the costs incurred, such as for travel invoices paid, payroll records to support labor costs, invoices for necessary products and services provided by third parties for each line item in the summary. The costs will be identified for each type of expenditure, such as for project management, real estate, engineering, agreements, etc. Payroll records may identify the person and the dollar amount associated with time spent working on the HST project. Billing rates will be the current rates for the particular personnel and pay grades during the Federal fiscal year when work was conducted.

3. **Task Orders**. The Authority will provide basic information regarding the nature of the work, POCs and desired delivery date to Reclamation. Reclamation will provide a cost estimate to the Authority. Once the two parties are in agreement as to the scope and estimated cost of the task, the Authority will provide a final version of the work request and the appropriate funding document that authorizes the advance deposit of the necessary funds to perform the work.

   a. No fiscal obligations are created through the execution of this Memorandum Of Agreement. A fiscal obligation arises only when the Authority establishes a bona fide need and provides necessary requirements and funding information to Reclamation and both parties execute a task order that includes the requirements and funding Information needed to accomplish the task.

   b. For all funding documents executed under a task order, both parties will identify a financial point of contact who is a "certifying official" as that term is used in 31 U.S.C. § 3528 (for a civilian activity). The funds certifying official shall:

      1) Timely execute all financial documents required for a valid funding request (i.e., to show funding meets purpose, time, and amount);
      2) Ensure funds are certified and legally available for the specified acquisition – in terms of purpose, time, and amount – for the specific acquisition; and
      3) Accept unexpended funds upon completion of the project or upon the need to deobligate.

4. **Term of the Agreement.** This Agreement shall remain in full force and effect from the last signatory date through, but not exceeding, Dec*emb*er 31, 2026, or the completion of all HST project activities on Reclamation lands and facilities, whichever occurs first. This expiration date may be extended by mutual written agreement of the Parties.

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5. **Modification and Termination.** This Agreement may be modified only through written mutual agreement. This Agreement may be terminated for cause by Reclamation 45 days after written notification.

SECTION H: COORDINATION AND PROGRESS REPORTS

1. The Authority and Reclamation will meet as necessary to discuss any and all matters relevant to this Agreement.

2. Reclamation will submit progress reports describing its work and invoices quarterly with appropriate supporting documentation for the costs incurred.

3. Work performed under this Agreement is subject to examination and audit.

SECTION I: OBLIGATIONS, RESTRICTIONS, AND BENEFITS

1. Nothing in this Agreement obligates Reclamation to any current or future expenditure of Federal funds.

2. Nothing in this Agreement restricts either party from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

SECTION J: POINTS OF CONTACT FOR THIS AGREEMENT

Bureau of Reclamation
David Pritchett, Project Manager
2800 Cottage Way (MP-720)
Sacramento, CA 95825
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California High-Speed Rail Authority
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In Witness Thereof, the Parties execute this Agreement on the date and year written above.

_____

By: Donald R. Glaser, Regional Director Date_____
Bureau of Reclamation

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By: Jeff Morales, Chief Executive Officer Date_____
California High-Speed Rail Authority

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