



TIDA comments 5.20.13  
Additional SFCTA edits June 18, 2013  
Revised draft July 2, 2013

## MEMORANDUM OF AGREEMENT # 12/13-18

for

### Right of Way Certification Services for the Yerba Buena Island Ramps Improvement Project

**THIS AGREEMENT** is made and shall be effective on the 5<sup>th</sup> day of April, 2012, by and between the San Francisco County Transportation Authority (“the Authority”) and the City and County of San Francisco (“City”) acting through the Treasure Island Development Authority (“TIDA”), referred to collectively as “Parties” or individually as “Party.”

#### RECITALS

- A. The Authority has been designated as the Congestion Management Agency (CMA) for the City and County of San Francisco (the “City”) under State law. In this capacity, the Authority has a wide range of responsibilities that includes preparing the long-range Countywide Transportation Plan, prioritizing state and federal transportation funds designated for San Francisco, and developing and operating a computerized travel demand forecasting model.
- B. TIDA is the local reuse authority for purposes of the redevelopment and conversion of former Naval Station Treasure Island (“NSTI”) to productive civilian uses, including portions of Yerba Buena Island (“YBI”).
- C. TIDA asked the Authority, in its capacity as the CMA, to lead the effort to prepare and obtain approval for all required technical documentation for the I-80/YBI Interchange Improvement Project because of its expertise in funding and interacting with the California Department of Transportation (“Caltrans”) on design aspects of the project. The scope of the I-80/YBI Interchange Improvement Project includes two major components: 1) The YBI Ramps Improvement Project (“Project”), which includes constructing new westbound on and off ramps (on the east side of YBI) to the new Eastern Span of the San Francisco-Oakland Bay Bridge (“SFOBB”); and 2) seismic retrofit of the existing YBI Bridge Structures on the west side of the island, a critical component of island traffic circulation leading to and from SFOBB.
- D. In May 2010, the Authority entered into Cooperative Agreement 4-2137 (Appendix A) with Caltrans, which defined each agency’s respective roles during the project development process. Over the last four years, the Authority Project team has worked closely with Caltrans on all aspects of the project development process. The Final Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”), with Caltrans as the National Environmental Policy Act lead agency under delegation from the Federal Highway Administration and the Authority as the California Environmental Quality Act lead agency, was approved in December 2011. The Parties believe that the Project has not changed since the

approval of the EIR/EIS, and that no additional environmental review is required as a result of this Agreement. The Authority is currently completing Plans, Specifications, and Estimates (PS&E) and the right of way certification in order to ready the project for construction funding authorization.

- E. In July 2008, the Parties entered into a Memorandum of Agreement (“MOA”) for project management and oversight, engineering and environmental services for the YBI Interchange Improvement Project (“Environmental MOA”). Under the terms of the Environmental MOA, TIDA’s total loan obligation to the Authority for the non-federal portion is \$10,287,000. TIDA’s obligation will be increased to \$11,037,000 to account for additional required local match for Environmental MOA activities as well as additional project costs not anticipated to be covered by State and Federal funds. The Parties anticipate approximately \$13,700,000 of the project costs will be reimbursed to the Authority from the Federal Highway Bridge Program (“HBP”) funds, with TIDA being responsible to reimburse the Authority for incurred interest expense and any and all costs not covered by state or federal funds. Project costs for environmental activities total to \$24,737,000. If federal grant funds do not become available for some or all of the project costs, or if the federal agency disallows the Authority’s reimbursement claims on some or all of the project costs, then pursuant to the Environmental MOA, TIDA bears the responsibility to repay the Authority for all costs not reimbursed by federal or state funds incurred on the YBI Interchange Improvement Project as set forth in the Environmental MOA.
- F. Through Resolution 14-XX, the Parties entered into an MOA effective April 5, 2012, for right of way certification services for the Project (Right of Way MOA). The total not-to-exceed principal amount of the Right of Way MOA is \$4,200,000. The Parties anticipate \$3,718,260 of the project costs will be reimbursed to the Authority from Federal HBP funds and \$481,740 from State Seismic Retrofit Proposition 1B (“Prop 1B”) funds, with TIDA agreeing pursuant to the Right of Way MOA to reimburse the Authority for incurred interest expense, fiscal charges and any and all costs not covered by state or federal funds.
- G. On March 26, 2013, the Authority approved Resolution 13-41, authorizing the Executive Director to execute the Cooperative Agreement for Construction Services and Right of Way Certification with Caltrans, the United States Coast Guard (“USCG”) License Agreement, associated utility agreements and all other supporting documents for receipt of federal and state funds for the Project. Caltrans has approved all required Plan, Specifications and Estimates (“PS&E”), Right of Way (“ROW”) certification and construction phase agreements necessary for Federal HBP and State Prop 1B funding authorizations for the Project, and the Authority had continued to progress with completing the remaining steps necessary to issue an Invitation to Bid (“ITB”) for construction of the Project. On March 29, 2013 Caltrans approved the Project ROW Certification (Appendix B), which was a condition precedent to the Authority’s issuance of the ITB. Caltrans’ approval of the Project ROW Certification included the following conditions (“ROW Certification Conditions”) to be satisfied prior to their approval: (i) execution of a TIDA Use Permit (Appendix C) for the relocation of certain buildings onto land controlled by TIDA, the required TIDA Use Permit was received on March 13, 2013 (ii) execution of agreements for the relocation of those certain utilities impacted by the Project listed in Appendix D hereto (the “Utility Relocation Agreements”), the required utility agreements were executed on March 28, 2013, (iii) delivery of a signed Consent Letter from the United States (“U.S.”) Department of the Navy (“Navy”) (Appendix E) to the U.S. Department of Transportation Federal Highway Administration (“FHWA”) with respect to the transfer of

certain real property interests required for the Project from the Navy to FHWA and grant of a license to TIDA providing Authority with necessary access to such real property for purposes of constructing the YBI Ramps (the “Consent Letter”), the required Navy Consent letter was received on January 31, 2013, and (iv) execution of a Revocable License for Non-Federal Use of Real Property from the United States Coast Guard (“USCG License”) (Appendix F), the required USCG License was executed on February 22, 2013.

- H. Construction of the Project requires execution of the USCG License for the construction of an approximately 800-foot long detour road to be used as a secondary access road into the USCG facilities when Macalla Road is blocked off due to the Project construction. As of the Effective Date of this Agreement, TIDA had requested that the Authority enter into the USCG License, and the Authority agreed to do so provided that TIDA agreed to reimburse the Authority for, and indemnify and hold the Authority harmless from, any and all costs and liabilities incurred by the Authority in connection with the USCG License as more particularly set forth in this Agreement. The required US Coast Guard License Agreement was executed on March 26, 2013.
- I. To facilitate funding for the Project, the Authority executed the Local Agency Advance Construction (“AC”) Commitment Block requested by Caltrans dated September 22, 2011 (the “Funding Commitment”) (Appendix G), whereby the Authority agreed to use local funds in lieu of federal funds to finance the cost of work identified as Local Funded AC until such time that federal funds become available for obligation and subsequent reimbursement of eligible work. The Authority was willing to do so on the understanding that TIDA would agree to reimburse the Authority for any Project costs incurred by the Authority and not reimbursed by federal or state funds, as provided in the Environmental MOA, the Construction MOA and this Agreement.
- J. On March 26, 2013, the Authority approved Resolution 13-41, authorizing the Executive Director to execute the Cooperative Agreement for Construction Services and the Right of Way Certification with Caltrans, the USCG License Agreement, associated utility agreements and all other supporting documents for receipt of federal and state funds for the Project. On July \_\_ 2013, the Authority approved Resolution 14-XX, authorizing the Executive Director to enter into this MOA with TIDA for right of way certification services for the Project. Therefore, although the Effective Date of this Agreement predates the Authority’s Board action on July \_\_ 2013, some of the obligations that this Agreement indicates are to be performed by the Authority in the future have already been performed as of the execution date of this Agreement.
- K. This Agreement sets forth certain rights and obligations of the Authority and TIDA with respect to the right of way phase of work for the Project.

## AGREEMENT

The Parties agree to the following:

1. **Project Management and Administrative Services.** The Authority shall provide the project management and administrative services described in Appendix H, “Description of Authority Services,” attached hereto and incorporated by reference as though fully set forth herein.
2. **Consultant Services and Right of Way Services.**

- a. **Consultant Services.** The Authority shall maintain a contract for professional services with the consultant chosen in accordance with the Request for Proposal (the “Consultant”) to perform the Phase 1 conceptual engineering and preparation of the Project Report (“PR”) and the Environmental Document (“ED”), to perform 100% of the Phase 2 Design services through final PS&E for the Project, and to provide right of way certification services including right of way engineering, utility agreement preparation and right of way coordination services, as more particularly described in Appendix H.
- b. **Right of Way Services.**
- i. **ROW Certification.**
1. The Authority shall provide Right of Way Services for the Project described in Appendix H. The Parties acknowledge and agree that if, in performing the Right of Way Services, the Authority enters into Cooperative Agreement No. 04-2137 with Caltrans, executes the required Right of Way Certification, the TIDA Use Permit, the Utility Relocation Agreements, and the USCG License, the Authority shall be deemed to do so at the request of and as an accommodation to TIDA, and it is TIDA’s and the Authority’s intent that all costs and liabilities incurred and assumed by the Authority pursuant to such agreements shall be defined as “Authority Right of Way Costs” that are subject to TIDA’s Reimbursement Obligation pursuant to Section 5 of the Agreement.
  2. In order to obtain Caltrans’ Right of Way Certification approval, which is a precondition to issuance of the Invitation to Bid (“ITB”) for the Project, the Authority has or shall enter into the Utility Relocation Agreements and the TIDA Use Permit. All obligations undertaken and work performed by the Authority pursuant to the Utility Relocation Agreements and the TIDA Use Permit are Authority Right of Way Costs that are subject to TIDA’s Reimbursement Obligation pursuant to Section 5 of the Agreement.
  3. The Consent letter dated January 31, 2013, which is a condition to Caltrans’ Right of Way Certification approval, provides that the Navy will issue a License to TIDA effective February 1, 2013, which will give the Authority a right of access to the specified property as required to construct the Project. As contemplated by the Consent letter, the Navy and TIDA have entered into that certain License for Nonfederal Use of Real Property, License No. N4769213RP13P25 (“License Agreement”), dated as of February 1, 2013, authorizing TIDA to access the premises on Yerba Buena Island described in such License Agreement (“Premises”), for the purpose of performing certain specified pre-construction activities as described in Section 4 of the License Agreement. The parties further contemplate that certain real property interests will be transferred from the U.S. Government (either acting through the Navy or the Federal Highway Administration) to TIDA in fee and in easement in order to effectuate the Project. By approving this Agreement, the TIDA Board and the City’s Board of Supervisors authorize (i) TIDA, working in consultation with the City’s Real Estate Director, to accept title to the real property interests as needed to effectuate the Project, and (ii) TIDA, upon completion of the Project, to transfer title to the real property interests acquired for the Project to Caltrans or its designee. All such transfers shall be without payment of monetary

consideration, and shall be for the property in its “as-is” condition. All deed and easement transfers shall be signed by the Treasure Island Director. TIDA hereby sublicenses to the Authority TIDA’s rights of access to and use of the Premises, and the Authority hereby accepts such sublicense and agrees to comply with the terms and conditions of the License Agreement; provided, however, that TIDA hereby agrees that all obligations assumed by the Authority under the License Agreement pursuant to this sublicense are hereby deemed to be “Authority Right of Way Costs” that are subject to TIDA’s Reimbursement Obligation pursuant to Section 5 of this Agreement, and provided further that the Authority’s agreement to assume responsibility for performing any obligations under the License Agreement is subject to TIDA’s indemnification obligations set forth in Section 9 of this Agreement. TIDA further agrees that it shall sublicense to the Authority any additional license to be issued to TIDA by the Navy for Project construction pursuant to the Consent Letter, and that all obligations assumed by the Authority pursuant to such sublicense shall be Authority Right of Way Costs that are subject to TIDA’s Reimbursement Obligation pursuant to Section 5 of this Agreement, and shall be subject to TIDA’s indemnity obligation set forth in Section 9 of this Agreement.

3. **Coordination.** The Authority and TIDA agree to the following with regard to the performance of the Project Management Services, the Administrative Services, the Consultant Services and the Right of Way Services under this Agreement:
  - a. The Parties acknowledge that TIDA may seek advice and consultation from the Department of Public Works (“DPW”) and other City departments in fulfilling its obligations under this Agreement, and Authority agrees to cooperate with TIDA and any City departments so designated by TIDA. All costs of participation by City departments shall be paid by TIDA or the City. Authority agrees to cooperate and consult with TIDA on all material aspects of the Project. The Parties agree to work together to establish appropriate coordination and consultation procedures throughout the bid and construction periods to promote effective and timely Project delivery.
  - b. TIDA shall participate in the selection of Consultants in accordance with Authority’s procurement procedures.
  - c. TIDA and the Authority shall establish a timeframe and work with Caltrans, FHWA, the Metropolitan Transportation Commission, the Bay Area Toll Authority, the Toll Bridge Program Oversight Committee, the California Transportation Commission, the Navy, the USCG, FHWA, the City’s Department of Building Inspection and other relevant agencies to enable the timing of the design, engineering and construction of the Project to occur in conjunction with the construction of the new eastbound ramp that is part of the Eastern Span of the SFOBB Project.
  - d. The Authority shall conduct all communications with the Consultant, the Construction Manager, Caltrans, TIDA, the Navy, utility owners, the USCG, FHWA, the Construction Contractor and the City’s Department of Building Inspection and other relevant agencies regarding deliverables, task updates or other performance of services. TIDA shall have the right to review or participate in communications that constitute a decision, action or commitment by Authority that would increase TIDA costs.

- e. The Authority shall provide timely deliverables to TIDA. The Authority shall maintain project records including deliverables, progress reports, correspondence, and a full accounting of the Authority Construction Costs, and shall make such records available to TIDA upon request.
- f. The Authority and TIDA shall have regular coordinating meetings, as needed.
- g. All services under this Agreement shall be performed in accordance with the Authority's policies, procedures and customary practices for projects of similar size, cost and scope.

**4. Approvals.**

- a. Authority and TIDA agree to cooperate in preparing and reviewing contract documents or any other material document relating to the project so as to facilitate timely approval of final documents. TIDA shall deliver approvals or any disapproval to Authority in writing and, in the case of disapproval stating the basis for the disapproval and changes needed in order for TIDA to approve the contracts or other material document.
- b. Authority shall submit to TIDA for approval any proposed change or amendment to any contract the value of which is greater than \$250,000. Should an exigent circumstance arise in which an amendment or contract change is required in order to avoid excessive cost, to protect persons or property, or to comply with an order from a legally controlling authority, and the amount of such amendment or contract change exceeds the above stated amount that would require TIDA approval. Authority shall notify TIDA of such fact and request approval of the proposed amendment or contract change within 48 hours of Authority becoming aware of such an occurrence. If in the judgment of Authority the proposed amendment or contract change is required to protect persons or property or comply with an order from a legally-controlling authority prior to receiving TIDA approval, then Authority may enter into such change without TIDA's prior approval.
- c. Authority shall notify TIDA in a timely manner should a claim or notice of potential claim be submitted by any contractor if such claim is in an amount greater than \$100,000. Authority shall consult with TIDA in analyzing any such large claim and submit to TIDA for approval any proposed disposition of such claim.
- d. TIDA acknowledges that delay to any approval can result in additional cost. TIDA shall reimburse Authority for any additional costs arising out of failure by TIDA to provide any timely approval to the extent that such additional costs are not reimbursed from federal or state sources.

**5. Project Funding and TIDA Reimbursement Obligation.**

- a. TIDA and the Authority shall work jointly in good faith to seek state and federal bond, grant or appropriation funds, or other funds as needed, to pay for all or any portion of the environmental, design and engineering, right of way, and construction work necessary for the Project. If either party becomes aware that any anticipated state or federal funding may not become available, that party shall immediately notify the other party, and TIDA and the Authority in consultation with Caltrans shall work together in good faith to determine the correct course of action in light of such fact. TIDA shall have the right to require the Authority to promptly stop working on the Project if, at any time, TIDA determines that available funding may not exist to pay for such work. TIDA acknowledges that any such stop work order can result in additional cost. TIDA shall reimburse Authority for any

additional costs arising out of a stop work order issued by TIDA to the extent that such additional costs are not reimbursed from federal or state sources.

- b. Interest shall accrue on the outstanding unreimbursed Authority Right of Way Costs, compounded quarterly, at the City Treasurer's Pooled Investment Fund rate or the Authority's borrowing rate, whichever is applicable, beginning on the date when the Authority first incurs Authority Right of Way Costs and continuing until the Authority has received full reimbursement under this Section 5 from TIDA and applicable state or federal agencies. Accrued and unpaid interest shall be deemed to be Authority Right of Way Costs as accrued. If the Authority has not issued long-term debt, the applicable interest rate will be the City Treasurer's Pooled Investment Fund rate, calculated quarterly. If the Authority has issued long-term debt for any purpose, the applicable interest rate will be the "all-in TIC" of the Authority's most recent long-term debt issuance. *(The all-in TIC is defined as: The discount rate, assuming semiannual compounding and a 30/360-day calendar, which sets the net present value of all payments of principal and interest equal to the par amount of bonds plus accrued interest plus premium less original issue discount less insurance premium less costs of issuance less other up front expenses discounted to the issue date.)* If at any time the Authority issues long-term debt and that increases the applicable interest rate under this subsection, the Authority shall modify the rate to the appropriate interest rate under this subsection and use that new rate going forward. The Authority shall provide written notice to TIDA of any change in the interest rate and the date on which the Authority applied the new rate. Notwithstanding the foregoing, in no event shall the interest rate the Authority applies exceed the maximum rate permitted under California Government Code Section 53531.
- c. Before the Authority issues any debt or otherwise borrows funds to pay Project Costs, the Authority shall notify TIDA. TIDA shall have the option, at its discretion, to include amounts for Project Costs in an Authority borrowing or to make other arrangements in order to meet its payment obligations under this Agreement. Alternatively, TIDA may request that the City issue debt to pay for Project Costs, or otherwise pay Project Costs as they are incurred by the Authority. If City pays for Project Costs as they are incurred, then the Authority shall promptly reimburse City for such payments upon Authority's receipt of corresponding federal and state reimbursements.
- d. The Parties acknowledge the Authority is advancing Proposition K ("Prop K") funds to pay for Authority Right of Way Costs, with the intent that Prop K funds will be repaid by reimbursements from federal, state or TIDA funds. For Authority Construction Costs that are not subject to interest payments under subsection 5 (b) above, the Authority shall invoice TIDA for, and TIDA shall be obligated to pay, an estimated pro-rata share of the interest and fiscal charges (including but not limited to letter of credit fees, remarketing fees and rating agency fees) incurred by the Authority through its Commercial Paper Program ("Fiscal Fees"). Fiscal Fees shall be applied to the lower of (1) the average quarterly outstanding unreimbursed Authority Right of Way Costs (including interest accrued pursuant to paragraph 5(b), above) or (2) the total outstanding unreimbursed Authority Right of Way Costs (including interest accrued pursuant to paragraph 5(b), above), beginning on the date when the Authority first incurs Authority Right of Way Costs and continuing until the Authority has received full reimbursement under this Section 5 from TIDA and applicable state or federal agencies or other funding sources. The Authority shall invoice TIDA for reimbursement of Fiscal Fees in arrears within sixty (60) days of the end

of each quarter. TIDA shall reimburse the Authority for Fiscal Fees within forty-five (45) days from receipt of Authority invoice.

- e. All Authority Right of Way Costs, accrued interest and Fiscal Fees with respect to Right of Way Services under subsections (a) and (b) above are referred to in this Agreement as the "Project Costs." TIDA shall reimburse the Authority for all Project Costs less any state or federal government funds or other funds actually reimbursed to the Authority for Authority Construction Costs (the "TIDA Reimbursement Obligation"). Notwithstanding anything to the contrary in this Agreement, the TIDA Reimbursement Obligation shall not include any costs incurred as a result of the Authority's sole negligence and willful misconduct.
- f. The Authority and TIDA anticipate that the total Authority Right of Way Costs will be covered by state and federal funds, including but not limited to Federal HBP and State Prop 1B funds. TIDA shall be responsible to reimburse the Authority, interest calculated under subsection 5 (b) above and Fiscal Fees calculated under subsection 5 (c) above. If state or federal funds do not become available for the Authority Right of Way Costs, the Authority and TIDA shall work together in an effort to identify other funding sources. If state or federal funds are made available for the Authority Right of Way Costs, but the applicable state or federal agency disallows the Authority's reimbursement claims on costs related to Authority Right of Way Costs, the Authority and TIDA shall work together with the applicable state and federal agency in an effort to address and correct any grounds for the disallowance decision.
- g. Except as provided herein, in no event shall the principal amount of the TIDA Reimbursement Obligation exceed a "not-to-exceed amount" of Four Million Two Hundred Thousand Dollars (\$4,200,000), as outlined in Appendix H, "Right of Way Phase Budget," attached hereto and incorporated by reference as though fully set forth herein, without the approval of TIDA's Board of Directors and the City's Board of Supervisors; provided that this not-to-exceed amount does not apply to or limit TIDA's obligations for accrued interest or Fiscal Fees on the Authority Right of Way Costs. As detailed in Appendix H, it is anticipated that state and federal funds, including Federal HBP and State Prop 1B funds, will fund approximately \$4,200,000 of the total Authority Right of Way Costs shown on Appendix H. If state or federal funds or other funds do not become available for some or all of the Authority Right of Way Costs anticipated in Appendix H, or if any state or federal agency disallows the Authority's reimbursement claims on some or all of the Authority Right of Way Costs anticipated in Appendix H, then all Authority Right of Way Costs anticipated to be but not paid by state or federal funds shall be included in the TIDA Reimbursement Obligation and TIDA shall pay those amounts to the Authority within forty-five (45) days from receipt of Authority invoice. TIDA and the Authority acknowledge that the terms and time period for reimbursement of the TIDA Reimbursement Obligation outlined in Section 5(f) of this Agreement are based on the assumed not-to-exceed TIDA Right of Way Reimbursement Obligation amount of \$4,200,000. TIDA and the Authority agree that if the TIDA Reimbursement Obligation (not including accrued interest or Fiscal Fees) exceeds the amounts recovered from the anticipated state and federal funds, the Parties shall meet and negotiate in good faith to evaluate a mutually agreeable repayment plan and schedule of the excess amount of the TIDA Reimbursement Obligation. Regardless of any adjustments to the schedule and deadlines for repayment, TIDA shall be responsible for the full amount of the TIDA Reimbursement Obligation subject to the limitations set forth in this Agreement.



- h. The Authority and TIDA acknowledge that this Agreement memorializes a reimbursement obligation of TIDA to the Authority and shall not be construed as a grant or gift of funds from the Authority to TIDA.

**6. Payments.**

- a. Parties agree that all Project invoices for payment or reimbursement of all right of way costs including consultants, contractors, utility companies and Caltrans shall be submitted directly to the Authority for review and payment. TIDA may, at its discretion, review invoices related to right of way activities and agrees to do so within a timeframe that allows timely payment. Authority shall provide a copy of the invoices and supporting documentation to TIDA. Authority shall provide a quarterly report to TIDA describing services rendered and the costs and expenses incurred by the Authority for the Project Management Services, Administrative Services, Right of Way Services, and Consultant Services, (collectively, the "Authority Right of Way Costs").
- b. The Authority shall prepare and submit invoices for the TIDA Reimbursement Obligation, quarterly reports, and supporting documentation to TIDA. The Authority shall have the discretion to submit invoices to TIDA may be submitted on a monthly, quarterly or annual basis as specified herein. TIDA shall reimburse the Authority for TIDA Reimbursement Obligation within forty-five (45) days from receipt of Authority invoice.

- 7. Controller's Certification of Funds.** The terms of this Agreement shall be governed by and subject to the budget and fiscal provisions of the City Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by TIDA under this Agreement until the City Controller's Office first certifies, pursuant to Section 3.105 of the City Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. TIDA shall include an estimated amount for the TIDA Reimbursement Obligation in TIDA's annual budget, and shall use good faith efforts to seek appropriation and Controller's certification of the funds necessary to reimburse the Authority in accordance with this Agreement. The Controller's initial certification of funds for this Agreement shall not include the Authority Right of Way Costs. The Controller's Office shall certify the funds that are available for this Agreement each fiscal year. TIDA agrees to promptly submit to Controller whatever materials or information may be required or requested to obtain Controller's certification of funds for right of way cost items, including relocation, utility, environmental mitigation or any other similar or related cost. TIDA shall promptly notify Authority in writing upon each instance of Controller's certification of funds required for any contract or other activity for the Project. TIDA shall include in such notification all details required by Authority in order to certify contracts or take other actions that require the Controller's certification of funds. The Parties acknowledge that any delay in receipt of Controller's certification of funds or any other similar required certification could result in the expiration of contractor bids or proposals. The Parties shall cooperate with each other and with Controller to seek timely certification of funds as and when needed.

- 8. Term.** The term of this Agreement shall be from July 1, 2013 to December 31, 2016. Time extensions shall be by amendment to this Agreement and by mutual agreement between the

Parties. TIDA's Reimbursement Obligation under Section 5 and 6 shall survive beyond the term of this Agreement.

9. **Indemnification.** TIDA acknowledges and agrees that the Authority will perform the Right of Way Services and has or will enter into the following Agreements for the benefit of and as an accommodation to TIDA with respect to the Right of Way Services: (i) Amendment No. 2 to Cooperative Agreement 4-2283, (ii) the Construction Cooperative Agreement 4-2383, (iii) the Utility Relocation Agreements, (iv) the USCG License Agreement, (v) the Construction Contract, (vi) any license or other agreement arising out of or with respect to the Consent Letter, including but not limited to the sublicense of the License Agreement provided under the Right of Way MOA, (viii) City's Department of Building Inspection plan approvals, (ix) the Funding Commitment, and (x) the Construction Manager Agreement (collectively, the "Construction Services Agreements. In consideration of the Authority's performance of the Right of Way Services and direct entry into the Construction Services Agreements for the benefit of TIDA, TIDA agrees to protect, indemnify, defend and hold harmless the Authority, its Board of Commissioners, officers and employees ("Indemnitees") from and against any and all losses, liabilities, costs, expenses, claims, suits, actions, and damages of any kind (including reasonable attorney's fees) arising from the Right of Way and Construction Services Agreements or the actions or inactions of the Authority or TIDA undertaken in connection with the Right of Way Services, except to the extent the same arise out of the sole negligence or willful misconduct of the Authority. TIDA further acknowledges and agrees that the foregoing indemnity is a material part of the consideration for the Authority's entry into this Agreement, and that the Authority would not enter into the Right of Way Services Agreement in the absence of such indemnity. Before seeking indemnity from TIDA under this section, the Parties agree to work together (in consultation with the City Attorney's Office) to make claims against and seek payment from responsible consultants, contractors or subcontractors under the Right of Way Services and Construction Services Agreements, or their insurers or bonding companies, if and to the extent the City Attorney's Office determines that a cause of action exists against any such third party. The costs of such claim or action shall be paid by TIDA. TIDA's obligation to indemnify the Authority shall survive expiration or earlier termination of this Agreement.
10. **Disputes:** If and to the extent there are any disagreements between the Authority and TIDA, the parties agree to meet and confer expeditiously in good faith to resolve the disagreements. To the extent the Parties are unable to resolve a dispute involving a matter that would require TIDA to make an unreimbursed payment, and despite good faith efforts by the Parties to resolve such dispute, the directives of TIDA shall control so long as such directives are consistent with all other provisions of this and all other related Agreements, are consistent with governing law and would not create a condition in which Authority could be exposed to liabilities for which TIDA's indemnifications of Authority do not apply.
11. **Notices:** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority: **Ms. Cynthia Fong**  
**Deputy Director for Finance and Administration**  
**San Francisco County Transportation Authority**  
**1455 Market Street, 22<sup>nd</sup> Floor**  
**San Francisco, California 94103**

Phone: (415) 522-4800  
Fax: (415) 522-4829  
E-mail: cynthia.fong@sfcta.org

To TIDA: **Mr. Robert Beck**  
**Treasure Island Director**  
**Treasure Island Development Authority**  
**1 South Van Ness Avenue, 5<sup>th</sup> Floor**  
**San Francisco, California 94103**  
**Phone: (415) \_\_\_\_\_**  
**E-mail: \_\_\_\_\_@sfgov.org**

Any notice of default must be sent by registered mail.

12. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
13. **Right to Terminate.** Either party may terminate this Agreement, in whole or in part, at any time upon five (5) working days' prior notice. In the event of such a termination, Authority shall submit a final project progress report to TIDA identifying work completed and the total Project Costs incurred through the termination date within forty-five (45) days of such termination. TIDA's reimbursement obligation under Section 5 and 6 shall survive a termination of this Agreement for Authority Right of Way Costs incurred or relating to work performed prior to such termination in accordance with this Section 13.
14. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
15. **Audit and Inspection of Records.** The Parties agree to maintain and make available to the each other, during regular business hours, accurate books and accounting records relating to their work under this Agreement and the work of any third parties performing work on the Project. The Parties will permit each other to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than three years after the Authority receives final payment from TIDA. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the Parties by this Section.

**IN WITNESS WHEREOF**, The parties have executed this AGREEMENT on the date set forth above:

SAN FRANCISCO COUNTY  
TRANSPORTATION AUTHORITY

The City and County of San Francisco, acting by  
and through the TREASURE ISLAND  
DEVELOPMENT AUTHORITY

Recommended by:

Recommended by:

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Cynthia Fong  
Deputy Director for Finance and  
Administration  
San Francisco County Transportation  
Authority

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Robert Beck  
Treasure Island Director

Recommended by:

APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney

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Leroy Saage  
Deputy Director for Capital Projects  
San Francisco County Transportation  
Authority

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Deputy City Attorney

Approved by:

Approved by:

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Mohammed Nuru  
Director, DPW

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Maria Lombardo  
Interim Executive Director  
San Francisco County Transportation  
Authority

APPROVED AS TO FORM:

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Authority General Counsel  
Stanley S. Taylor  
Nossaman LLP

DRAFT

## **APPENDICES**

**Appendix A:** Caltrans Cooperative Agreement 4-2137

**Appendix B:** Right of Way Certification

**Appendix C:** TIDA Use Permit

**Appendix D:** Utility Relocation Agreements

**Appendix E:** U.S. Navy Consent Letter

**Appendix F:** U.S. Coast Guard License

**Appendix G:** Caltrans Funding Commitment

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Appendix A  
Caltrans Cooperative Agreement 4-2137

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**Appendix B**  
**Right of Way Certification**

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**Appendix C**  
**TIDA Use Permit**

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**Appendix D**  
**Utility Relocation Agreements**

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**Appendix E**  
**U.S. Navy Consent Letter**

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**Caltrans Funding Commitment**

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## Appendix H

### Description of Authority Services

The Authority will provide project management, administrative and right of way services for the Project. These services include project management oversight consultant services, Authority support staff services, legal services and other administrative services related to the Project. The services will be billed on an actual time and materials basis, and will vary from month-to-month.

#### Project Management Services

Project Management Services will include the following activities:

- Briefings to Authority and TIDA management regarding project issues and progress;
- Monitor and review YBI Ramps Improvement Project consultant (AECOM) performance, work products, deliverables;
- Review consultant team monthly progress reports, with emphasis on trends, issues and problems, potential future issues and problems, proposed solutions;
- Review schedule and cost, including milestones and percent expended/completed;
- Review and approve invoices;
- Prepare project financial plan and schedule;
- Review and make recommendations on any project scope change requests;
- Follow up on issues and deficiencies to assure corrective action;
- Attend and participate in meetings, and make presentations as requested;
- Draft memos and reports as requested; draft and distribute meeting minutes;
- Assist in engineering and technical reviews;
- Prepare necessary relevant documents including Cooperative Agreements;
- Assist in the selection of subsequent engineering, planning, environmental, construction management or other specialty consultants to perform studies and /or design work including preparation of supplemental RFPs, participation in the consultant selection process, and participate in negotiations for the scope and fee for selected consultants;
- Provide project management and coordination services for the preparation of all required technical work products;
- Review and make recommendations to Authority management on CEQA issues;
- Provide day-to-day project management services, and participate in Project Development Team (PDT) and ad hoc meetings; attend Board meetings as requested by Authority staff;
- Prepare periodic Staff Reports for the Board agenda packets as requested by Authority staff;
- Provide coordination between all stakeholders including Authority staff, Caltrans, FHWA, the Metropolitan Transportation Commission, Toll Bridge Program Oversight Committee, TIDA, various resource agencies, the California Transportation Commission, the Navy, the USCG, FHWA, the City's Department of Building Inspection, Bay Area Toll Authority, utility companies and the public as necessary;
- Provide oversight of all consultant contracts for the preparation of all required technical work products;
- Provide project management of selected consultants on the project with respect to budget, schedule, and scope, and ensure project issues that surface are addressed expeditiously;
- Assist with preparation and submittal of funding applications and participate in meetings

- with appropriate staff and agencies required to obtain funding;
- Provide prescriptive analysis to Authority staff, prospective issues and proposed resolutions in advance;
  - Assist Authority staff in tasks necessary to maintain and expedite project delivery; and
  - Other PM-related tasks as requested by Authority staff.

#### Administrative Services

Administrative Services will include the following activities:

- Manage and administer Consultant and Caltrans agreements;
- Process payment of Consultant and Caltrans invoices;
- Obtain federal and state grant reimbursements;
- Provide legal counsel services related to the review of Project documents;
- Perform annual audit and pre-award audit services as necessary;
- Prepare memos and reports as requested for Authority Committees and Board;
- Attend meetings with TIDA staff and stakeholders;
- Maintain sufficient insurance amounts and coverages to meet Project requirements;
- Record keeping and filing; and
- Other related tasks as requested.

#### Right of Way Services

Right of Way Services will include the following activities:

- Execute right of way certification with Caltrans, U.S. Coast Guard License Agreement, TIDA Use Permit, associated utility agreements and all other related documents for receipt of federal and state funds for the Project;
- Performance of all right of way certification activities as required by Caltrans right of way manual;
- Environmental mitigation activities as defined in the Project environmental document including relocation of Quarters 10 and Building 267 (Q10/B267) to the Clipper Cove area on Treasure Island;
- Utility relocations required for construction of the Project including execution of utility agreements;
- Construction of a detour road as defined in the U.S. Coast Guard License Agreement; and
- Right of way engineering, detailed design, and right of way support services as required for Q10/B267 relocation, U.S. Coast Guard detour road construction, and utility relocations

**Appendix I**  
**Right of Way Phase Budget**

Right of Way Phase Budget

The budget and projected cash flow for the Right of Way Phase is as follows:

<b>Description of Work</b>	<b>Fiscal Year 2012/13</b>	<b>Fiscal Year 2013/14</b>	<b>Fiscal Year 2014/15</b>	<b>Fiscal Year 2015/16</b>	<b>Fiscal Year 2016/17</b>	<b>Budget</b>
1. Quarters 10/Building 267 Relocation		\$ 405,000	\$ 945,000			\$1,350,000
2. U.S. Coast Guard Detour Road		\$1,225,000				\$1,225,000
3. Utility Relocation			\$ 625,000			\$ 625,000
4. Right of Way Engineering Support Services and Detailed Design	\$600,000	\$ 200,000	\$ 100,000	\$75,000	\$25,000	\$1,000,000
<b>Total Right of Way Phase Budget</b>	<b>\$600,000</b>	<b>\$1,830,000</b>	<b>\$1,670,000</b>	<b>\$75,000</b>	<b>\$25,000</b>	<b>\$4,200,000</b>

Billing Rates

The rates for the project management services set forth below may be adjusted to reflect the rate determined in any amendment of the project management oversight (PMO) contract between the Authority and the PMO consultant.

The rates for Authority services set forth below may be adjusted to reflect salary adjustments for applicable staff members.

<b>Type</b>	<b>Classification</b>	<b>Hourly Billing Rate</b>
Project Management Services	Principal	\$239.09
Project Management Services	Technical/Clerical Support	\$94.50
Administrative Services	Executive Staff and Principal Engineers	\$168.82 - \$239.44
Administrative Services	Senior Engineers and Analysts	\$105.59 - \$131.87
Administrative Services	Administrative	\$56.70 - \$100.49
Administrative Services	Legal Services	\$389.00
Administrative Services	Audit Services	\$347.00



**Appendix J**  
**Assignment of Rents and Memorandum of Assignment**  
**[to be attached]**

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