



Edits from SFCTA/TIDA meeting 6-28-13
TIDA comments 7.09.13

MEMORANDUM OF AGREEMENT # 12/13-19

for

Construction Services for the Yerba Buena Island Ramps Improvement Project

THIS AGREEMENT is made and shall be effective on the [date 1: day] day of [month], [year], 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 No. 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 Plan, Specifications and Estimates (“PS&E”) and right of way certification efforts 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 amount 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. The Authority and Caltrans have negotiated a Cooperative Agreement No. 04-2383 for the construction phase of the Project (Appendix B), and Amendment No. 2 to Cooperative Agreement No. 04-2283 (Appendix C) between Authority and Caltrans with respect to certain changes in the Caltrans SFOBB project that are required for the Project to physically tie in to the new SFOBB improvements, modifying the scope of work for “Betterments” required for the Project, and providing for the Authority to pay \$120,000 for the Authority’s contribution to the cost of construction support for the Betterments, and an increase of \$1,199,400 for the Authority’s additional not-to-exceed contribution to the total construction cost of such Betterments. The Parties anticipate that approximately \$1,319,400 of this amount will be reimbursed to the Authority from the Federal HBP or State Prop 1B funds, with TIDA being responsible to reimburse the Authority for any and all costs not covered by state or federal funds and the federal grant local matching funds requirements for the additional work as more particularly set forth in this Agreement.
- H. 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 D), 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 Right of Way MOA and this Agreement.

- I. Also in furtherance of the Project, the Authority has issued a Request for Proposals for YBI Ramps Construction Management Support Services (the “Construction Management RFP”). Award of a contract for the services requested in the Construction Management RFP is contingent upon allocation of Federal HBP and State Prop 1B funds as well as execution of this Agreement, whereby TIDA agrees 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 Construction Management RFP and the contract for services awarded pursuant thereto as set forth in this Agreement.
- J. Pursuant to that certain Freeway Agreement 04-SF-80-PM 7.61/8.23 between the State of California and the City, Route 80 between the East and West limits of YBI is designated a freeway. The City has consented to the closing of certain City streets, construction of frontage roads and other local streets and other construction, and pursuant to that certain Freeway Maintenance Agreement 04-SF-80 PM 7.6R-8.3R to be entered into between the State and the City, the State and the City will agree upon the allocation of responsibility for maintenance of the YBI Ramps Project and such City frontage roads, and other streets and facilities. The Authority is willing to proceed with the construction phase of the Project provided that TIDA assumes responsibility for actively coordinating and assisting with the completion of negotiations of the Freeway Maintenance Agreement and execution of such agreement by the intended parties thereto and that the Freeway Maintenance Agreement is executed before construction contract award. The Parties expect the Freeway Maintenance Agreement to be executed before a construction contract is advertised.
- K. TIDA further requests that the Authority, acting on TIDA’s behalf, complete the foregoing steps necessary to pursue construction of the Project, issue an Invitation to Bid (“ITB”) for construction work required for the Project, and enter into a construction contract (“Construction Contract”) consistent with the California Public Contract Code and the California Labor Code. The Authority is willing to do so provided that TIDA agrees 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 Construction Contract as more particularly set forth in this Agreement.
- L. The cost of the construction phase of the project is estimated to be \$77.5 million and the Parties anticipate this expense to be 100% reimbursed by a combination of Federal HBP funding and State Prop 1B funding. The Authority will not award the Construction Contract until these funds have been secured, as evidenced by the federal issuance of an E-76 and the State issuance of the Program Supplement Agreement for the project.
- M. 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. On July __, 2013, the Authority approved Resolution 14-XX, authorizing

the Executive Director to enter into an MOA with TIDA for construction services for the Project.

- N. This Agreement sets forth certain rights and obligations of the Authority and TIDA with respect to the construction phase of work for the Project.

AGREEMENT

The Parties agree to the following:

1. **Project Management and Administrative Services.** The Authority shall provide project management and administrative services described in Appendix E, “Description of Authority Services,” attached hereto and incorporated by reference as though fully set forth herein.
2. **Consultant Services, Caltrans Services and Construction Services.**
 - a. **Consultant Services.**
 - i. 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 design services during construction as more particularly described in Appendix E.
 - ii. The Authority shall contract for the professional construction management services with the consultant chosen in accordance with the Construction Management RFP (the “Construction Manager”), as more particularly described in the Construction Manager Scope of Services set forth in Appendix F (the “Construction Manager Services”).
 - b. **Caltrans Services.** In order to build the YBI ramps in conjunction with the construction of the new Eastern Span of the SFOBB, the Authority has executed two critical Cooperative Agreements with Caltrans, Agreement Nos. 4-2137 (Appendix A) and 4-2283 (Appendix B) (the “Cooperative Agreements”). In order to move into the construction phase for the Project, it is necessary for the Authority to enter into Amendment No. 2 of Cooperative Agreement No. 4-2283 (Appendix C). Collectively, all work by Caltrans under the Cooperative Agreements, as amended, is the “Caltrans Services.”
 - c. **Construction Services.** The Authority shall provide Construction Services for the Project described in Appendix E.
 - i. The Parties acknowledge and agree that in order to provide Construction Services, the Authority must enter into agreements with Caltrans and other agencies. These agreements include: Cooperative Agreement No. 04-2383 with Caltrans; Amendment No. 2 to Cooperative Agreement No. 04-2283 with Caltrans; the TIDA Use Permit; the Utility Relocation Agreements; the USCG License and other similar agreements. The Parties further acknowledge and agree that 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 “Authority Construction Costs” that are subject to TIDA’s Reimbursement Obligation pursuant to Section 5 of the Agreement.

- ii. The Authority shall contract for construction work with the contractor chosen in accordance with the ITB (the “Construction Contractor”) to build the YBI Ramps, all as more particularly described in the approved final PS&E, and in accordance with the estimated Construction Contractor Budget set forth in Appendix G, both of which are incorporated by reference as if fully set forth herein. Upon execution of the Construction Contract the estimated Construction Contractor Budget set forth in Appendix G shall be replaced with the successful bid price for the Construction Contract as executed by the Authority and the Construction Contractor. Collectively, all work by the Construction Contractor under the Construction Contract with the Authority is the “Contractor Work.” All obligations undertaken and work performed by the Authority pursuant to the Construction Contract are Authority Construction Costs that are subject to TIDA’s Reimbursement Obligation pursuant to Section 5 of the Agreement.
 - iii. The Authority shall obtain, or shall cause the Construction Contractor to obtain as part of the Contractor Work, all Building approvals required by the City’s Department of Building and Inspection. All obligations undertaken and work performed by the Authority to obtain such approvals are Authority Construction Costs that are subject to TIDA’s Reimbursement Obligation pursuant to Section 5 of the Agreement.
 - iv. Before awarding the Construction Contract, Authority shall prepare and submit a bid summary to TIDA tabulating bid results and confirming that the recommended contractor has complied with requirements as described within the ITB and requesting TIDA approval in accordance with Section 4 of this Agreement.
3. **Coordination.** The Authority and TIDA agree to the following with regard to the performance of the Project Management Services, Administrative Services, Consultant Services, Construction Manager Services, Caltrans Services and Construction 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, Construction Manager and Construction Contractor 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, bid packages or any other material document relating to the project so as to facilitate timely approval of final documents. Before awarding Consultant, Construction Manager or Construction contracts, or other third party contracts relating to the project, and following consultation with TIDA, Authority shall submit these contracts to TIDA for approval and such approval shall not be unreasonably withheld. 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 the proposed amendment or contract change is reasonably 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 Construction 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 Construction 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 Construction 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.)* [Nadia to confirm] 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 Construction 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 Construction Costs (including interest accrued pursuant to paragraph 5(b), above) or (2) the total outstanding unreimbursed Authority Construction Costs (including interest accrued pursuant to paragraph 5(b), above), beginning on the date when the Authority first incurs Authority Construction Costs and continuing until the Authority has received full reimbursement under this Section 4 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 Construction Costs, accrued interest and Fiscal Fees with respect to Construction 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 or willful misconduct.
- f. The Authority and TIDA anticipate that the total Authority Construction 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 Construction 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 Construction Costs, but the applicable state or federal agency disallows the Authority’s reimbursement claims on costs related to Authority Construction 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 Forty-Six Million Seven Hundred Thousand Dollars (\$46,700,000), as outlined in Appendix H, “Construction 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 Construction 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 \$77,500,000 of the total Authority Construction Costs shown on Appendix H. If state or federal funds or other funds do not become available for some or all of the Authority Construction 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 Construction Costs anticipated in Appendix H, then all Authority Construction 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. In this circumstance, the maximum not-to-exceed amount for the principal amount of the TIDA Reimbursement Obligation will increase to Seventy-Seven Million Five Hundred Dollars (\$77,500,000). 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 Construction Reimbursement Obligation amount of \$46,700,000. 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 from all 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 construction 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, Consultant Services, Construction Manager Services, Caltrans Services and Construction Services (collectively, the "Authority Construction 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 Construction Costs. Before the Authority awards the Construction Contract for the Project, TIDA shall seek to obtain the Controller's certification of

funds for the Construction Contract. 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 the Construction Contract. 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 Construction Services and has or will enter into the following Agreements for the benefit of and as an accommodation to TIDA with respect to the Construction 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 Construction 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 Construction Services Agreements or the actions or inactions of the Authority or TIDA undertaken in connection with the Construction 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 Construction 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 contractors or subcontractors under the 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 reasonably could

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, 22nd 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, 5th 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 Construction 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.

DRAFT

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:

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

Robert Beck
Treasure Island Director

Recommended by:

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

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

Deputy City Attorney

Approved by:

Approved by:

Mohammed Nuru
Director, DPW

Maria Lombardo
Interim Executive Director
San Francisco County Transportation
Authority

DRAFT

APPENDICES

Appendix A: Caltrans Cooperative Agreement No. 4-2137

Appendix B: Caltrans Cooperative Agreement No. 4-2383

Appendix C: Amendment No. 2 to Caltrans Cooperative Agreement No. 4-2283

Appendix D: Funding Commitment

Appendix E: Description of Authority Services

Appendix F: Construction Manager Services

Appendix G: Construction Contractor Budget

Appendix H: Construction Phase Budget

Appendix I: Assignment of Rents and Memorandum of Assignment

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Appendix A
Caltrans Cooperative Agreement No. 4-2137

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Appendix B
Caltrans Cooperative Agreement No. 4-2383

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Appendix C
Amendment No. 2 to Caltrans Cooperative Agreement No. 4-2283

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Appendix D
Funding Commitment

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Appendix E

Description of Authority Services

The Authority will provide project management, administrative and construction 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 performed by Authority and Project Management Oversight staff

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 consultants (AECOM and Parsons Brinckerhoff) performance, work products, deliverables;
- Review consultant teams 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, construction contractor or other specialty consultants to perform studies, design work, or construction, including preparation of supplemental Request for Proposals (RFPs), participation in the selection process, and participate in negotiations for the scope and fee for selected consultants and construction contractor;
- 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 proscriptive 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 performed by Authority and Project Management Oversight staff

Administrative Services will include the following activities:

- Manage and administer agreements with Consultant, Construction Manager, Caltrans and Construction Contractor;
- Process payment of Consultant, Construction Manager, Caltrans and Construction Contractor invoices;
- Obtain federal and state grant reimbursements;
- Establish construction administration procedures in compliance with federal and state regulations;
- 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.

Construction Services performed by Authority and Project Management Oversight staff

Construction Services will include the following activities:

- Enter into Cooperative Agreement No. 04-2383 with Caltrans, Amendment No. 2 to Cooperative Agreement No. 04-2283 with Caltrans, the TIDA Use Permit, the Utility Relocation Agreements, the USCG License, the Construction Contract and all other related documents for receipt of federal and state funds for the Project;
- Procure and enter into contract for construction management services with the Construction Manager; and
- Procure and enter into contract for construction work with the Construction Contractor to build the YBI Ramps.

Appendix F

Construction Manager Services

SECTION III - SCOPE OF SERVICES

The construction management firm shall provide the necessary full construction management services for the I-80/YBI Ramps Project in San Francisco, California. The construction management contract for the YBI Ramps Project will consist of a three-phase effort with Phase 1 consisting of pre-construction services; Phase 2 consisting of construction phase management services, and Phase 3 consisting of post construction phase services.

The construction management (CM) services required will include:

TASK 1 - PRE-CONSTRUCTION SERVICES

- Perform constructability review of the construction contract documents (construction plans, special provisions, bid proposal and relevant information) for the project and submit a constructability report on discrepancies, inconsistencies, omissions, ambiguities, proposed changes and recommendations.
- Perform biddability review of the 100% contract documents (construction plans, special provisions, bid proposal and relevant information) for the project and submit a biddability report on discrepancies, inconsistencies, omissions, ambiguities, proposed changes and recommendations.
- Prepare a detailed Critical Path Method (CPM) construction schedule including pre-construction and construction activities.
- Management of the construction contract bidding phase; and management of the pre-bid conference and bid opening procedures including review of bids, bid bonds, insurance certificates and related contractor bid proposal submittals; and assist the Authority in selecting the lowest responsive and responsible bidder.
- Process construction contract for execution by the Construction Contractor.
- Arrange for, coordinate and conduct a pre-construction conference, including preparation of meeting minutes.
- Complete review, comment and approval of the Construction Contractor's baseline schedule of work.

TASK 2 - CONSTRUCTION PHASE SERVICES

- Perform all necessary construction administration functions as required by the Authority's Construction Contract Administration Procedures, Caltrans Standard Specifications, the project Special Provisions, and Caltrans Construction and Local Programs Manual including:
 - Perform all required field inspection activities, monitor Construction Contractor's performance and enforce all requirements of applicable codes, specifications, and contract drawings.
 - Provide inspectors for day-to-day on the job observation/inspection of work. The inspectors shall make reasonable efforts to guard against defects and deficiencies in the work of the Construction Contractor and to ensure that provisions of the contract documents are being met.
 - Prepare daily inspection reports documenting observed construction activities.

- Hold weekly progress meetings, weekly or as deemed necessary, between contractors, the Authority, Caltrans oversight, US Coast Guard, TIDA, the City and other interested parties. Prepare and distribute minutes of all meetings.
- Take photographs and videotape recordings of pre-construction field conditions, during construction progress, and post construction conditions.
- Prepare and recommend contractor progress payments including measurements of bid items. Negotiate differences over the amount with the contractor and process payments through the Authority Project Manager.
- Monitor project budget, purchases and payment.
- Prepare monthly progress reports documenting the progress of construction describing key issues cost status and schedule status.
- Establish and process project control documents including:
 - Daily inspection diaries
 - Weekly progress reports
 - Monthly construction payments
 - Requests for Information (RFI)
 - Material certifications
 - Material Submittals
 - Weekly Statement of Working Days
 - Construction Change Orders
 - Review of certified payrolls
- Review of construction schedule updates:
 - Review construction contractor's monthly updates incorporating actual progress, weather delays and change order impacts. Compare work progress with planned schedule and notify construction contractor of project slippage. Review Construction Contractor's plan to mitigate schedule delay. Analyze the schedule to determine the impact of weather and change orders.
- Evaluate, negotiate, recommend, and prepare change orders. Perform quantity and cost analysis as required for negotiation of change orders.
- Analyze additional compensation claims submitted by the Construction Contractor and prepare responses. Perform claims administration including coordinating and monitoring claims responses, logging claims and tracking claims status.
- Process all Construction Contractor submittals and monitor design consultant and Caltrans review activities.
- Review, comment and facilitate responses to RFI's. Prepare responses to RFI on construction issues. Transmit design related RFI's to designer. Conduct meetings with Construction Contractor and other parties as necessary to discuss and resolve RFI's.
- Act as construction project coordinator and the point of contact for all communications and interaction with the Construction Contractor, Caltrans, U.S. Coast Guard, TIDA, the City, U.S. Navy, project designer and all affected parties.
- Schedule, manage and perform construction staking in accordance with the methods, procedures and requirements of Caltrans Surveys Manual and Caltrans Staking Information

Booklet.

- Schedule, manage, perform and document all field and laboratory testing services. Ensure the Construction Contractor furnishes Certificates of Compliance or source release tags with the applicable delivered materials at the project site. Materials testing shall conform to the requirements and frequencies as defined in the Authority's Construction Contract Administration Procedures, Caltrans Construction Manual and the Caltrans Materials Testing Manuals.
- Coordinate and meet construction oversight requirements of Caltrans, U.S. Coast Guard, TIDA, the City and the U.S. Navy for work being performed within the respective jurisdictions. Construction Manager shall be responsible for coordinating with Caltrans, U.S. Coast Guard, TIDA and the City regarding traffic control measures, press releases, responses to public inquiries, and complaints regarding the project.
- Oversee environmental mitigation monitoring. Monitor and enforce Construction Contractor SWPPP compliance.
- Enforce safety and health requirements and applicable regulations for the protection of the public and project personnel.
- Facilitate all necessary utility coordination with respective utility companies and coordinate implementation of utility agreements.
- Provide coordination and review of Construction Contractor's detours and staging plans with Caltrans, and San Francisco Bay Bridge construction management staff.
- Maintain construction documents per Federal and State requirements. Enforce Labor Compliance requirements.
- Quality Assurance/Quality Control (QA/QC) – Establish and implement a QA/QC procedure for construction management activities undertaken by in-house staff and by subconsultants. The QA/QC procedure set forth for the project shall be consistent with Caltrans' most recent version of the "Guidelines for Quality Control/Quality Assurance for Project Delivery". Enforce Quality Assurance requirements.

TASK 3 – POST-CONSTRUCTION SERVICES

- Perform Post Construction Phase activities including:
 - Prepare initial punch list and final punch list items.
 - Finalize all bid item, claims, and change orders. Provide contract change order documentation to project designer. Coordinate preparation of record drawings (as-built drawings) by project designer.
 - Provide final inspection services and project closeout activities, including preparation of a final construction project report per Federal and State requirements.
 - Turn all required construction documents over to Authority and Caltrans for archiving.

GENERAL PROJECT ADMINISTRATION

The Construction Manager will also perform the following general project administrative duties:

- a) Prepare a monthly summary of total construction management service charges made to each task. This summary shall present the contract budget for each task, any re-allocated budget amounts, the prior billing amount, the current billing, total billed to date, and a total percent billed to date. Narratives will contain a brief analysis of budget-to-actual expenditure variances, highlighting any items of potential concern for Authority consideration before an item becomes a funding issue.
- b) Provide a summary table in the format determined by the Authority indicating the amount of DBE firm participation each month based upon current billing and total billed to date.
- c) Provide a monthly invoice in the standard format determined by the Authority that will present charges by task, by staff members at agreed-upon hourly rates, with summary expense charges and subconsultant charges. Detailed support documentation for all Construction Manager direct expenses and subconsultant charges will be attached.

The Construction Manager shall demonstrate the availability of qualified personnel to perform construction engineering and construction contract administration.

The Construction Manager shall maintain a suitable construction field office in the project area for the duration of the project. Under a separate contract with the Authority, the Construction Contractor will be required to provide a construction trailer for the construction management team's use which shall include desks, layout table, phone, computers, fax machine, reproduction machine, file cabinets and for use for weekly construction meetings. The Construction Manager shall provide all necessary safety equipment required for their personnel to perform the work efficiently and safely. The Construction Manager personnel shall be provided with radio or cellular-equipped vehicles, digital camera, and personal protective equipment suitable for the location and nature of work involved.

The Construction Manager shall provide for the consultant field personnel a fully operable, maintained and fueled pick-up truck which is suitable for the location and nature of work to be performed (automobiles and vans without side windows are not suitable). Each vehicle shall be equipped with an amber flashing warning light visible from the rear and having a driver control switch.

The Construction Manager field personnel shall perform services in accordance with Caltrans and FHWA criteria and guidelines and subject to the following general requirements:

All reports, calculations, measurements, test data and other documentation shall be prepared on forms specified and/or consistent with Caltrans standards.

All construction management services and construction work must comply with the requirements of the Authority, Caltrans, US Coast Guard and TIDA. The Construction Manager will report directly to Eric Cordoba, the Authority's Project Manager.

The Construction Manager shall demonstrate competency in all fields of expertise required by this RFP. The Authority is undertaking this effort in its capacity as CMA for San Francisco and in cooperation with TIDA, the City's Mayor's Office, and Caltrans District 04.

Project schedule: the Authority desires to adhere to the milestone schedule shown below for the consultant contract to perform pre-construction and construction management services.

- Notice to Proceed (NTP) Pre-construction Services July 2013

- Perform Pre-construction Services July 2013 – October 2013
- Notice to Proceed (NTP) Construction Services November 2013
- Perform Construction Management Services November 2013 – October 2016

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Appendix G
Construction Contractor Budget

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Appendix H
Construction Phase Budget

Construction Phase Budget

The budget and projected cash flow for the Construction Phase is as follows:

Description of Work	Fiscal Year 2013/14	Fiscal Year 2014/15	Fiscal Year 2015/16	Total Budget
1. Construction Capital	\$ 3,106,714	\$ 41,893,572	\$ 20,899,714	\$ 65,900,000
2. Construction Management Support	\$ 1,543,391	\$ 2,659,726	\$ 2,254,595	\$ 6,457,712
3. Other Estimated Support	\$ 1,229,006	\$ 2,117,945	\$ 1,795,337	\$ 5,142,288
Total Construction Phase Budget	\$ 5,879,111	\$ 46,671,243	\$ 24,949,646	\$ 77,500,000

Billing Rates

The rates for 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.

Type	Classification	Hourly Billing Rate
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 I
Assignment of Rents and Memorandum of Assignment
[to be attached]

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