

**STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: June 12, 2014**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to enter into a Cooperative Agreement (Agreement) between the Transbay Joint Powers Authority (TJPA) and the California Department of Transportation (Caltrans), identifying independent quality assurance and construction oversight services to be provided by Caltrans for certain elements of the Bus Ramps project that are within State right of way or directly affect Interstate 80 and State facilities, and providing for TJPA reimbursement to Caltrans for the cost of such services, which shall not exceed \$400,000.

SUMMARY:

The Bus Ramps will be constructed as a combination of at-grade and aerial alignments to connect the Transbay Transit Center to Interstate 80 and the future Bus Storage facility. Certain elements of the Bus Ramps to be constructed within State right of way or directly affecting I-80 and State facilities are required to adhere to the State's standards for highway design and construction, and therefore require oversight by the State.

Staff has negotiated the Agreement with the Caltrans District 4 Office, identifying the construction oversight services to be provided by Caltrans and providing for TJPA reimbursement to Caltrans for the cost of the services. TJPA will reimburse Caltrans for the cost of providing construction oversight services at the hourly rates specified in the Agreement, up to \$400,000. Under the Agreement, Caltrans will also provide independent quality assurance (IQA) at no cost to the TJPA. IQA is defined as Caltrans' policy and procedural guidance through to completion of the Bus Ramps. The Agreement will terminate upon completion of the Bus Ramps project and the parties' signing of a Cooperative Agreement Closure Statement; certain agreement provisions survive termination. In addition to the Caltrans IQA and construction oversight services, and as is standard under the TJPA's design and construction contracts, Webcor/Obayashi Joint Venture will provide quality control, and Turner Construction along with Pelli Clarke Pelli Architects will provide quality assurance during Bus Ramps construction.

Under the Agreement, TJPA will issue task orders to Caltrans that define the scope of work, budget, and schedule for the services to be performed by Caltrans. TJPA must approve, in advance, any significant changes in the schedule or estimated cost of the Caltrans services that are subject to reimbursement under the Agreement.

Caltrans District 4 Office has presented the Agreement to Caltrans Headquarters for approval.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to execute the Cooperative Agreement between the TJPA and Caltrans for independent quality assurance and construction oversight services for certain elements of the Bus Ramps project that are within State right of way or directly affect I-80 or State facilities for an amount not to exceed \$400,000.

ENCLOSURES:

1. Resolution
2. Cooperative Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The California Department of Transportation (Caltrans) manages certain State right of way and State highway infrastructure, including Interstate 80; and

WHEREAS, Certain elements of the Transbay Transit Center Program, including the Bus Ramps, connect with the State highway infrastructure and are located within the State right of way or directly affect I-80 and State facilities; and

WHEREAS, On June 10, 2010, the Transbay Joint Powers Authority (TJPA) and Caltrans entered into Cooperative Agreement No. 4-2247 for Caltrans to provide certain design review and oversight services for distinct elements of the Transbay Transit Center Program to be constructed within or abutting the State of California right of way, including the Bus Ramps, during the design process; and

WHEREAS, Certain elements of the Bus Ramps within State right of way or directly affecting I-80 and State facilities also require Caltrans to provide certain review and oversight during the construction process; and

WHEREAS, Caltrans will provide independent quality assurance (IQA) of the Bus Ramps elements within State right of way or directly affecting I-80 and State facilities at no cost to TJPA; and

WHEREAS, Caltrans will provide construction oversight services of certain elements of the Bus Ramps within the State right of way or directly affecting I-80 and State facilities, in addition to the IQA, subject to reimbursement by TJPA; and

WHEREAS, In addition to the Caltrans IQA and construction oversight services, and as is standard under the TJPA's design and construction contracts, Webcor/Obayashi Joint Venture will provide quality control, and Turner Construction along with Pelli Clarke Pelli Architects will provide quality assurance during the Bus Ramps construction; and

WHEREAS, Staff has negotiated a Cooperative Agreement between TJPA and Caltrans that identifies the IQA and other construction oversight services to be provided by Caltrans for the Bus Ramps elements within the State right of way or directly affecting I-80 and State facilities, at an amount not to exceed \$400,000; and

WHEREAS, Under the Agreement, TJPA retains the authority to issue task orders to Caltrans, defining the scope of work, budget, and schedule for services to be performed by Caltrans, and TJPA must approve, in advance, significant changes in the schedule or estimated cost of the Caltrans services; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Cooperative Agreement substantially in the form attached, which stipulates a maximum compensation of \$400,000 and for a term to commence on the effective date and terminate upon completion of the Bus Ramps project and following the parties' signing of a Cooperative Agreement Closure Statement.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 12, 2014.

Secretary, Transbay Joint Powers Authority

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 20___, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

TRANSBAY JOINT POWERS AUTHORITY, a joint powers agency created under California Government Code sections 6500 et seq., referred to herein as "TJPA."

RECITALS

1. STATE and TJPA, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements in the State Highway System (SHS) within the area of TJPA jurisdiction in the City and County of San Francisco.
2. TJPA is constructing a new Transbay Transit Center and associated facilities on the site of the former Transbay Terminal at 1st and Mission Streets in downtown San Francisco. The new Transbay Transit Center will centralize the region's transportation network by accommodating eleven transportation systems, including future High Speed Rail, under one roof. The project listed below, referred to herein as "PROJECT," is part of the Transbay Transit Center.

- Bus Ramps

Portions of PROJECT will encroach on State right of way that connects I-80 and the Fremont Street Offramp Structures in San Francisco. All elements of PROJECT constructed within STATE owned right of way and portions of PROJECT directly affecting the I-80 and STATE facilities shall hereinafter together be referred to as "IMPROVEMENTS" as shown in Attachment 2, attached to and made a part of this Agreement.

3. TJPA is willing to fund one hundred percent (100%) of all capital and construction support costs for IMPROVEMENTS as shown in Exhibit A, attached to and made a part of this Agreement, except that the costs of STATE's Independent Quality Assurance (IQA) of IMPROVEMENTS will be borne by STATE.
4. TJPA desires to have STATE perform certain review services beyond STATE's IQA, for IMPROVEMENTS, referred to herein as "STATE SERVICES" listed in Attachment 1, attached to and made a part of this Agreement, for an estimated cost of \$400,000, as shown in Exhibit B. STATE is agreeable to provide STATE SERVICES to TJPA as reimbursed work.
5. The parties agree that TJPA will prepare the contract documents and advertise, award, and administer the construction contract for IMPROVEMENTS all hereinafter referred to as "WORK." The scope of WORK may include the detailed items described in Attachment 1.
6. Resolution 3434, adopted by the Metropolitan Transportation Commission for the Regional Transit Expansion Program, commits \$28,341,000 in Statewide Transportation Improvement Program (STIP) funds from San Francisco County's Regional Shares for the Transbay Transit Center. The California Transportation Commission (CTC) has programmed \$10,153,000 in STIP Regional Improvement Program (RIP) funds from San Francisco County's Regional Shares for PROJECT.

STATE and TJPA have executed Master Agreement No. 64A0184 for State Funded Transit Projects. Capital and support costs for IMPROVEMENTS may be funded out of allocations from referenced STIP RIP funds.

7. Plans, Specifications and Estimates (PS&E) for PROJECT were covered in a prior Cooperative Agreement executed by STATE and TJPA on August 26, 2010 (District Agreement No. 04-2247), and Right of Way transfer from STATE to TJPA was covered in a prior Cooperative Agreement executed by STATE, TJPA and the City and County of San Francisco on July 11, 2003 (District Agreement No. 04-1981-C).
8. TJPA is the CEQA lead agency for PROJECT.
9. Federal Transit Administration is the NEPA lead agency for PROJECT.
10. Prior to this Agreement, a draft Environmental Impact Statement, Environmental Impact Report, and Section 4(f) Evaluation (EIS/EIR) was issued for the Transbay Terminal-Caltrain Downtown Extension-Redevelopment Project on October 4, 2002. The Final EIS/EIR was issued in March 2004. The Record of Decision was issued by the Federal Transit Administration on February 8, 2005. The Notice of Determination was issued by the Planning Department on June 16, 2004. Addenda to the Final EIS/EIR have subsequently been adopted, the most recent of which was adopted on December 8, 2011. PROJECT has full environmental clearance to proceed to design and construction.
11. The parties hereby set forth the terms and conditions under which IMPROVEMENTS are to be constructed, financed, owned, operated, and maintained.

SECTION I

TJPA AGREES:

1. To fund one hundred percent (100%) of all capital and construction support costs for IMPROVEMENTS as shown in Exhibit A, except STATE's IQA cost for IMPROVEMENTS, including, but not limited to, the cost of contract claims paid to the construction contractor and the cost of STATE's legal costs to defend WORK related claims which may be filed by the contractor.
2. To reserve the right to use STATE funds, as cited in Article 6, RECITAL as well as any additional future funds programmed by the CTC, for capital and support costs for IMPROVEMENTS.
3. To have STATE perform STATE SERVICES for IMPROVEMENTS listed in Attachment 1, at TJPA's expense.
4. To bear one hundred percent (100%) of the actual cost of STATE SERVICES, estimated to be \$400,000. STATE SERVICES shall be authorized by TJPA in advance by way of Task Orders. The hourly rate for STATE SERVICES described in Exhibit B shall include costs of providing personnel resources, equipment and all direct and indirect costs (functional and administrative overhead assessments directly attributable to STATE SERVICES applied in accordance with STATE's standard accounting procedures). The actual cost of STATE SERVICES for IMPROVEMENTS shall be determined after completion of all work and upon final accounting of costs.
5. To deposit with STATE within twenty-five (25) days of receipt of invoice therefore (which invoice will be forwarded immediately following execution of this Agreement) for STATE SERVICES in the amount of \$35,000. Said deposit represents the estimated cost for two (2) months of STATE SERVICES.
6. To make best efforts to pay STATE within twenty-five (25) days of receipt of monthly invoices for the actual cost of STATE SERVICES authorized pursuant to this Agreement until completion of IMPROVEMENTS.

7. To pay STATE any outstanding balance for the actual cost of STATE SERVICES authorized pursuant to this Agreement after completion of all work and to make best efforts to pay within twenty-five (25) working days after receipt of a detailed statement made upon final accounting of costs.
8. Upon execution of this Agreement, to certify that funds are budgeted for the estimated total cost of STATE SERVICES.
9. All WORK performed by TJPA, or performed on TJPA's behalf, shall be performed in accordance with all applicable State and Federal laws, regulations, policies, procedures and standards. All such WORK shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of construction.
10. TJPA agrees to consider any request by STATE to terminate a contract award or discontinue the contracted services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
11. TJPA will provide, or cause to provide, source inspection services for IMPROVEMENTS.
12. TJPA will prepare a Quality Management Plan (QMP) for IMPROVEMENTS which will include a description of how source inspection will be performed and will submit the QMP to STATE for review and approval by the State Materials Engineer, which approval shall not be unreasonably withheld.
13. STATE will issue the parent permit to TJPA for IMPROVEMENTS upon submittal of a complete encroachment permit application. The parent permit will cite approval of the QMP by STATE as a condition of issuing the double permit.

STATE will issue the double permit to the contractor for IMPROVEMENTS upon submittal of a complete encroachment permit application and all conditions cited in the parent permit have been met.
14. To advertise, award, and administer the construction contract for IMPROVEMENTS in accordance with requirements of the Local Agency Public Construction Act and the California Labor Code, including its prevailing wage provisions. Workers employed in the performance of work contracted for by TJPA, and/or performed under encroachment permit, are covered by provisions of the California Labor Code in the same manner as are workers employed by STATE's contractors. The use of any Federal funds towards WORK will mandate the inclusion and enforcement of all applicable Federal labor mandates.
15. Construction of IMPROVEMENTS shall not commence until TJPA's contract plans, the utility relocation plans, and the right of way certification involving such WORK have been reviewed and accepted by STATE and encroachment permits have been issued to TJPA and TJPA's contractor for IMPROVEMENTS.
16. TJPA's construction contractor shall maintain in force, until completion and acceptance of PROJECT construction contract, a policy of General Liability Insurance, including coverage of Bodily Injury Liability and Property Damage Liability that complies with all coverage requirements with Section 7-1.12 of STATE's then effective Standard Specifications. Such policy shall contain an additional insured endorsement naming STATE and its officers, agents, and employees as additional insureds. This insurance coverage shall be evidenced by a Certificate of Insurance in a form satisfactory to STATE which shall be delivered to STATE before the issuance of an encroachment permit to TJPA's construction contractor.
17. To require the construction contractor to furnish both a payment and a performance bond naming TJPA as obligee with both bonds complying with the requirements set forth in Section 3-1.02 of STATE's current Standard Specifications prior to performing

any WORK. TJPA shall defend, indemnify, and hold harmless STATE and its officers, agents, and employees from all claims and suits by stop notice claimants related to the construction of IMPROVEMENTS.

18. To have IMPROVEMENTS constructed by contract to the satisfaction of and subject to STATE's acceptance that IMPROVEMENTS are constructed in accordance with the STATE accepted IMPROVEMENTS PS&E.
19. Contract administration procedures for IMPROVEMENTS shall conform to STATE's Construction Manual Supplement for Local Agency Resident Engineer and Local Agency Structure Representative Guidelines, and WORK encroachment permits.
20. Construction within the existing or ultimate SHS right of way shall comply with STATE's Standard Specifications, the PROJECT Special Provisions, and STATE's Construction Manual Supplement for Local Agency Resident Engineer and Local Agency Structure Representative Guidelines.
21. If any existing utility facilities conflict with the construction of IMPROVEMENTS or violate STATE's encroachment policy, TJPA shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.

The costs for IMPROVEMENTS positive identification and location, protection, relocation, or removal of existing utility facilities whether inside or outside STATE's right of way that conflict with the construction of IMPROVEMENTS shall be determined in accordance with Federal and California laws and regulations, and STATE's policies, procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.

22. All survey work for IMPROVEMENTS shall conform to the methods, procedures, and requirements of STATE's Surveys Manual and STATE's Staking Information Booklet.
23. IMPROVEMENTS material testing and Quality Control/Assurance shall conform to STATE's Construction Manual, Construction Manual Supplement for Local Agency Resident Engineer, Local Agency Structure Representative Guideline and STATE's California Test Methods, and shall be performed by a material-tester certified by STATE, at TJPA's expense.
24. Should TJPA request that STATE perform any portion of PROJECT work not set forth in this Agreement, TJPA shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
25. To furnish, at TJPA's expense and subject to the approval of STATE, a field site representative who is a licensed civil engineer in the State of California to perform the functions of a Resident Engineer for WORK.
26. As a WORK cost, to furnish sufficient qualified support staff to assist the Resident Engineer, which may include structure representative, construction surveys, soils and foundation tests, measurement and computation of quantities, testing of construction materials, checking shop drawings, preparation of estimates and reports, preparation of the mandated "As-Built" drawings, and other inspection and staff services necessary to assure that the construction is being performed in accordance with IMPROVEMENTS PS&E. Said qualified support staff shall be independent of the design engineering company and construction contractor.
27. Within one hundred eighty (180) days following the completion and acceptance of IMPROVEMENTS construction, to furnish STATE with a complete set of "As-Built" plans in accordance with STATE's then current CADD Users Manual, Plans Preparation Manual, and STATE practice. These documents include monument preservation documents and Records of Surveys prepared to satisfy the requirements of the

California Land Surveyors Act (Business and Professions Code sections 8700-8805). Copies of survey documents and Records of Surveys filed in accordance with Business & Professions Code, including sections 8762 and 8771, shall contain the filing information provided by the county in which filed. TJPA shall also submit corrected full-sized hardcopy structure plans.

28. To retain, or cause to be retained, for audit by STATE or other government auditors, for a period of three (3) years from the date of processing the final payment under PROJECT construction contract, all records and accounts relating to IMPROVEMENTS construction, and make such materials available at TJPA's office. Copies thereof shall be furnished to STATE at STATE's request.
29. If TJPA cannot complete WORK as originally scoped, scheduled, and estimated, TJPA will, only with STATE's prior written consent, amend IMPROVEMENTS PS&E for a suitable resolution to ensure an alternate form of modified WORK that will, at all times, provide a safe and operable SHS.
30. If TJPA terminates WORK prior to completion, STATE shall require TJPA, at TJPA's expense, to return the SHS right of way to its original condition or to a safe and operable condition acceptable to STATE. If TJPA fails to do so, STATE reserves the right to finish WORK or place IMPROVEMENTS in a safe and operable condition and STATE will bill TJPA for all actual expenses incurred and TJPA agrees to pay said bill within thirty (30) days of receipt.
31. If unanticipated cultural, archaeological, paleontological or other protected materials are encountered during IMPROVEMENTS construction, TJPA shall stop work in that area until a qualified professional can evaluate the nature and significance of the find and a plan is approved for the removal or protection of that material. TJPA will notify STATE within twenty-four (24) hours of any discovery. The costs for any removal or protection of that material shall be borne by TJPA.
32. To provide a Construction Zone Enhancement Enforcement Program (COZEEP) for WORK by contracting directly with the California Highway Patrol (CHP) for all traffic restrictions as outlined in STATE's Construction Manual.
33. TJPA shall provide STATE twenty-four (24) hour access to all STATE facilities, including, but not limited to, the I-80 structures, Fremont Street Offramp Structures, STATE substations and all other STATE facilities that may be impacted by PROJECT.

SECTION II

STATE AGREES:

1. At no cost to TJPA, to provide IQA to assure that TJPA's WORK is performed in full compliance with the approved IMPROVEMENTS PS&E and in accordance with STATE's then effective policies, procedures, standards, and practices. This IQA function includes both the obligation and the authority to reject noncompliant IMPROVEMENTS work and materials accepted by TJPA, to order any actions needed for public safety or the preservation of property on the SHS, and to assure compliance with all provisions of the encroachment permit(s) issued by STATE to TJPA and TJPA's contractor.
2. To provide encroachment permits at no cost.
3. Independent assurance testing, specialty testing, and approval of the type of asphalt and concrete plants shall be performed by STATE, at STATE's expense.
4. To perform STATE SERVICES for IMPROVEMENTS listed in Attachment 1, at TJPA's expense.

5. Upon execution of this Agreement, to submit an invoice to TJPA for a deposit in the amount of \$35,000. Said deposit represents the estimated cost for two (2) months of STATE SERVICES.
6. As IMPROVEMENTS proceed, to submit to TJPA monthly invoices for actual expenditures for STATE SERVICES. STATE's monthly invoice to TJPA shall include a report that describes work performed and expenditure for that month relative to established budget for the Task Order. Parties shall mutually develop and agree to the format and content of said report. Any significant changes in schedule or cost will be anticipated in advance and presented to TJPA for approval.
7. Upon receipt of a notice of invoice discrepancy from TJPA, if STATE disputes such claim, STATE shall so notify TJPA within seven (7) working days. STATE shall credit undisputed claims to TJPA in its next current funding request. Upon final resolution of a disputed claim, STATE shall make the appropriate credit or debit to TJPA for STATE SERVICES.
8. To account for all STATE SERVICES costs for IMPROVEMENTS to be paid for by TJPA, pursuant to this Agreement. STATE shall utilize a project management system to monitor STATE SERVICES schedules and costs.
9. Upon completion of STATE SERVICES for IMPROVEMENTS and all work incidental thereto, to furnish TJPA with a detailed statement of the total actual costs of STATE SERVICES for IMPROVEMENTS. STATE thereafter shall refund to TJPA (promptly after completion of STATE's final accounting of IMPROVEMENTS costs) any amount of TJPA's overpayments to STATE after actual costs borne by TJPA have been deducted, or to bill TJPA for any additional amount required to complete TJPA's financial obligation pursuant to this Agreement.
10. To retain, or cause to be retained, for audit by TJPA's or other government auditors, for a period of three (3) years from date of processing the final payment under this Agreement, all records and accounts relating to STATE SERVICES activities of IMPROVEMENTS, and make such materials available at STATE's District 4 Office. Copies thereof shall be furnished to TJPA at TJPA's request; TJPA shall bear the actual cost of reproduction.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
2. The cost of any engineering support performed by STATE includes all direct and applicable indirect costs. STATE calculates indirect costs based solely on the type of funds used to pay support costs. State and federal funds are subject the current Program Functional Rate. Local funds are subject to the current Program Functional Rate and the current Administration Rate. The Program Functional Rate and the Administration Rate are adjusted periodically.
3. The parties to this Agreement understand and agree that STATE's IQA is to assure that TJPA's WORK is performed in full compliance with the approved IMPROVEMENTS PS&E and in accordance with STATE's then effective policies, procedures, standards, and practices. IQA includes prompt reviews by STATE. IQA does not include any work necessary to actually develop or deliver construction activities, nor any validation to verify, nor rechecking work performed by TJPA, nor providing guidance to TJPA.
4. The parties to this Agreement understand and agree that STATE SERVICES is to ensure coordination and inspection of construction activities to ensure the construction of

IMPROVEMENTS are completed according to the approved plans and specifications. STATE SERVICES does not include any work necessary to actually develop or deliver construction activities, nor providing guidance to TJPA.

5. Pursuant to this Agreement, all STATE SERVICES performed by STATE that are not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and TJPA will reimburse STATE from then available PROJECT funds. The parties agree that prior to commencing STATE SERVICES, STATE and TJPA's designated Project Managers will develop distinct Task Orders for IMPROVEMENTS that define the scope of work, budget and schedule for STATE SERVICES. Upon execution of this Agreement, TJPA shall only be responsible for reimbursing STATE for STATE SERVICES to the extent such STATE SERVICES are authorized in advance by TJPA by way of Task Orders.
6. In the event of a cost overrun, STATE and TJPA will work cooperatively to identify an acceptable course of action. Additional costs and responsibilities for any required actions that exceed the STATE SERVICES budgeted costs shall be covered by an amendment to this Agreement.
7. STATE and TJPA, as set forth in Exhibit C, attached hereto and incorporated herein, will coordinate, obtain, implement, renew and amend the necessary regulatory agency permits, agreements, and/or approvals for IMPROVEMENTS. The cost to coordinate, obtain, implement, renew and amend the necessary regulatory agency permits, agreements, and/or approvals is a WORK cost.
8. TJPA will prepare the applications for any required regulatory agency permits, agreements and/or approvals for IMPROVEMENTS, unless otherwise set forth in Exhibit C. TJPA will submit all said applications to STATE for review, comment and approval. TJPA will submit the final applications to the appropriate regulatory agencies, unless otherwise set forth in Exhibit C. The costs to prepare, review, comment, and submit the application to the appropriate regulatory agency will be a WORK cost.
9. STATE and TJPA will comply with all of the commitments and conditions set forth in the environmental documentation, permits, approvals, and applicable agreements as those commitments and conditions apply to each party's responsibilities in this Agreement.
10. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), and/or approval(s) for IMPROVEMENTS, all legal costs associated with those said legal challenges will be a WORK cost.
11. If, during performance of IMPROVEMENTS construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks by TJPA as a WORK cost. The CEQA Lead Agency and if applicable, NEPA Lead Agency, shall review, comment and approve the additional environmental documentation.
12. All administrative draft and administrative final reports, studies, materials, and documentation relied upon, produced, created or utilized for IMPROVEMENTS will be held in confidence to the extent permitted by law, and where applicable, the provisions of California Government Code section 6254.5(e) shall govern the disclosure of such documents in the event said documents are shared between the parties. Parties will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete the work described in this Agreement without the written consent of the party authorized to release them, unless required or authorized to do so by law.

13. During WORK, representatives of TJPA and STATE will cooperate and consult with each other to assure that all WORK is accomplished according to the IMPROVEMENTS PS&E and STATE's then applicable policies, procedures, standards, and practices. Satisfaction of these requirements shall be verified by STATE representatives who are authorized to enter TJPA's property during construction for the purpose of monitoring and coordinating construction activities.
14. IMPROVEMENTS' PS&E changes shall only be implemented by contract change orders that have been reviewed and concurred with by STATE's representative(s). All changes affecting public safety or public convenience, all design and specification changes, and all major changes as defined in STATE's Construction Manual shall be approved by STATE in advance of performing that work. Unless otherwise directed by STATE's representative, change orders authorized as provided herein will not require an encroachment permit rider. All changes shall be shown on the "As-Built" plans.
15. TJPA has provided its construction contract claims process to STATE; TJPA shall process any and all claims related to WORK through TJPA's claims process. Upon TJPA's request, STATE's representative will be made available to TJPA at no cost to TJPA to provide advice and technical input in any claims process related to WORK.
16. Construction contract claim(s) costs are WORK costs.
17. In the event that STATE proposes and/or requires a change in design standards, implementation of those new or revised design standards shall be done in accordance with STATE's Highway Design Manual, Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with TJPA in a timely manner regarding the effect of proposed and/or required IMPROVEMENTS changes.
18. The party that discovers Hazardous Materials (HM) (as defined in federal, state and local laws, ordinances, rules and regulations in any way regulating issues focused on human health or safety and industrial hygiene and pertaining to the protection of the environment or the pollution or contamination of the air, soil, surface water or groundwater), will immediately notify the other party to this Agreement.
19. Definitions.

HM-1 is defined as hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by IMPROVEMENTS or not.

HM-2 is defined as hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by IMPROVEMENTS.

"HM management activities" are defined as management activities related to HM-1 or HM-2 including, without limitation, any necessary manifest requirements and designation of disposal facility.
20. STATE, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right of way on real property owned by STATE in fee on the date this Agreement is executed. STATE will undertake or cause to be undertaken HM management activities related to HM-1 with minimum impact to PROJECT schedule and STATE will pay, or cause to be paid, all costs for HM management activities related to HM-1 found within the existing SHS right of way on real property owned by STATE in fee.
21. If HM-1 is found within PROJECT limits and outside the existing SHS right of way, except to the extent that the HM-1 is caused or contributed to by STATE, its agents, representatives, contractors, lessees, permittees, licensees or others acting under STATE authority after July 11, 2003, the responsibility for the disposal of the HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. TJPA, in concert

with the local agency having land use jurisdiction over the parcel(s), will ensure that HM management activities related to HM-1 are undertaken with minimum impact to PROJECT schedule. Independent of PROJECT, all costs for HM management activities related to HM-1 found within PROJECT limits and outside the existing SHS right of way will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.

22. TJPA is responsible for HM management activities related to HM-2 found within PROJECT limits. HM management activities costs related to HM-2 are PROJECT costs.
23. STATE's acquisition of or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
24. STATE, in exercising its authority under section 591 of the Vehicle Code, has included all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code as applicable to WORK areas open to public traffic. TJPA shall take all necessary precautions for safe operation of TJPA's vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by TJPA to assure the protection of the traveling public and STATE employees from injury and damage from such vehicles or equipment.
25. Upon WORK completion and acceptance, subject to the approval of STATE, TJPA will operate and maintain all PROJECT facilities at its own cost.
26. Upon satisfactory completion of all WORK under this Agreement, as determined by STATE, actual ownership and title to materials, equipment, and appurtenances installed for non-SHS operations both inside and outside of the SHS right of way will automatically be deemed to be under the control of TJPA or an appropriate third party as determined by TJPA, while STATE continues to be the owner of the underlying fee for which the STATE has retained title. No further agreement will be necessary to transfer ownership as hereinbefore stated.
27. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not a party to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
28. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by TJPA and/or its agents under or in connection with any work, authority or jurisdiction conferred upon TJPA under this Agreement. It is understood and agreed that TJPA, to the extent permitted by law, will defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by TJPA and/or its agents under this Agreement.
29. Neither TJPA nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE and/or its agents under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that STATE, to the extent permitted by law, will defend, indemnify and save harmless TJPA and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE and/or its agents under this Agreement.

30. Prior to the commencement of any construction activity within the SHS right of way, either STATE or TJPA may terminate this Agreement by written notice to the other party.
31. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
32. This Agreement will terminate upon completion of WORK and when all parties have met all scope, cost, and schedule commitments included in this Agreement and have signed a cooperative agreement closure statement, which is a document signed by parties that verifies the completion of WORK.

However, all indemnification, document, retention, audit, claims, environmental commitment, legal challenge, hazardous material, operation, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

SIGNATURES

Parties declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
Department of Transportation

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Deputy District Director

By: _____
Executive Director

Approved as to form and procedure:

Attorney
Department of Transportation

Attest: _____
Board Secretary

Certified as to funds:

Approved as to form:

District Budget Manager

Attorney

Certified as to financial terms and policies:

Accounting Administrator

EXHIBIT A
IMPROVEMENTS COST ESTIMATE

Item	STATE	TJPA
Estimated Cost of IMPROVEMENTS	\$0	\$12,400,000
Construction Support for IMPROVEMENTS	\$0	\$1,110,000
State-Furnished Materials for IMPROVEMENTS	\$0	\$0
Total for IMPROVEMENTS	\$0	\$13,510,000

EXHIBIT B

Cost Proposal for STATE SERVICES for oversight of IMPROVEMENTS

Description	Hours	Dollars
Bus Ramps	3500	\$400,000
Total	3500	\$400,000

EXHIBIT C

ENVIRONMENTAL PERMITS, APPROVALS, and AGREEMENTS FOR IMPROVEMENTS							
REQUIRED PERMITS, APPROVALS & AGREEMENTS	N/A	COORDINATE	PREPARE APPLICATION	OBTAIN	IMPLEMENT	RENEW	AMEND
401 RWQCB		TJPA	TJPA	TJPA	TJPA	TJPA	TJPA
NPDES SWRCB		TJPA	TJPA	TJPA	TJPA	TJPA	TJPA
BCDC Permit		TJPA	TJPA	TJPA	TJPA	TJPA	TJPA

ATTACHMENT 1 – SCOPE OF WORK FOR IMPROVEMENTS

WBS Level					Description	STATE	TJPA	N/A
4	5	6	7	8				
3	265				Awarded and Approved Construction Contract		X	
		50			Contract Ready for Advertising		X	
		55			Advertised Contract		X	
		60			Bids Opened		X	
		65			Contract Award		X	
		70			Executed and Approved Contract		X	
		75			Independent Assurance		X	
5	270				Construction Engineering and General Contract Administration		X	
		10			Construction Staking Package and Control		X	
			10		Construction Staking Package		X	
			20		Project Control for Construction		X	
		15			Construction Stakes		X	
			15		Slope Stakes		X	
			25		Rough Grade Stakes		X	
			30		Final Grade Stakes		X	
			35		Drainage and Minor Structure Stakes		X	
			50		Miscellaneous Stakes		X	
			55		Photogrammetric Product for Construction		X	
			60		Ground Stakes for Major Structure		X	
			65		Superstructure Stakes for Major Structure		X	
		20			Construction Engineering Work		X	
			05		Resident Engineer's File Review		X*	

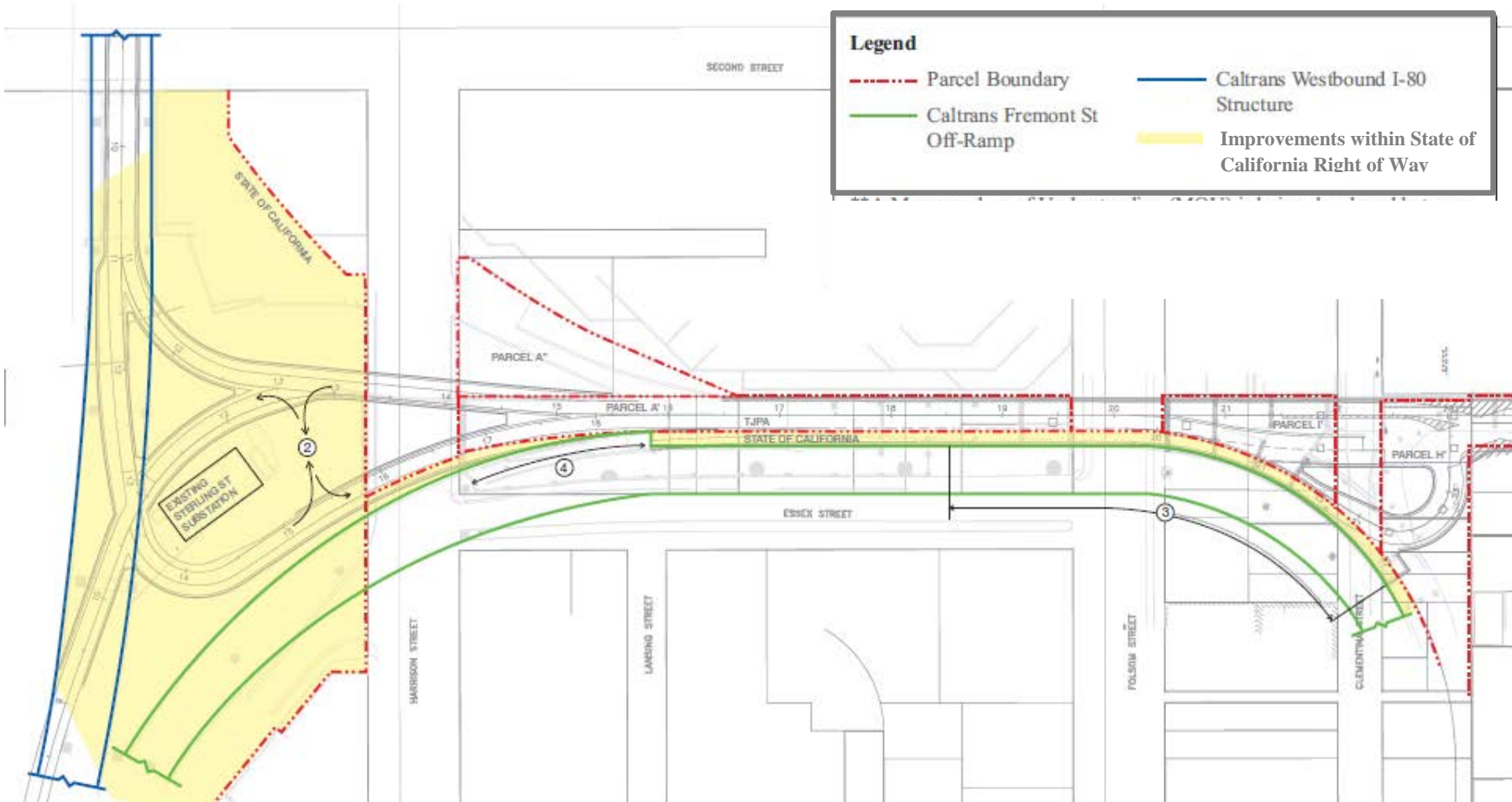
			10	Project Plans, Special Provisions, and Estimate Review		X*	
			15	Contract Pay Quantities		X	
			20	Lines and Grades Control		X	
			25	Contractors' Falsework Submittals Review		X	
			30	Contractors' Trenching and Shoring Submittals Review		X	
			35	Shop Plans Review		X*	
			40	Cost Reduction Incentive Proposals Review		X	
			45	Contractors' Water Pollution Control Program Review		X*	
			50	Technical Support		X*	
			99	Other Construction Engineering Products		X	
		25		Construction Contract Administration Work		X	
			05	Secured Lease for Resident Engineer Office Space or Trailer		X	
			10	Set Up Construction Project Files		X	
			15	Pre-Construction Meeting		X*	
			20	Progress Pay Estimates		X	
			25	Weekly Statement of Working Days		X	
			30	Construction Project Files and General Field Office Clerical Work		X	
			35	Labor Compliance Activities		X	
			40	Approved Subcontractor Substitutions		X	
			45	Coordination		X*	
			50	Civil Rights Contract Compliance		X	
			99	Other Construction Contract Administration Products		X	
		30		Contract Item Work Inspection		X	
			05	Photographed Jobsite and Contractors' Operations		X	
			10	Inspection of Contractors' Work for Compliance		X*	
			15	Contractors' Operations Relative to Safety		X*	

				Requirements Documentation			
			20	Daily Diary of Contract Operations		X	
			25	Punch List		X*	
		35		Construction Material Sampling and Testing		X*	
			05	Materials Sampling and Testing for Quality Assurance		X*	
			10	Plant Inspection for Quality Assurance		X*	
			15	Independent Assurance Sampling and Testing		X*	
			20	Source Inspection		X*	
		40		Safety and Maintenance Reviews		X*	
		45		Relief From Maintenance Process		X*	
		55		Final Inspection and Acceptance Recommendation		X*	
		60		Plant Establishment Administration		X	
		65		Transportation Management Plan Implementation During Construction		X	
		75		NOTE: This WBS element is address in the text of this cooperative agreement. Resource Agency Permit Renewal and Extension Requests		X	
		80		Long-Term Environmental Mitigation/Mitigation Monitoring During Construction Contract		X	
		99		Other Construction Engineering and General Contract Administration		X	
5	275			Construction Engineering and General Contract Administration of Structures Work		X	
		10		Office Administration Work for Structures		X	
		20		Field Administration Work for Structures		X*	
		30		Contract Change Order Inspection for Structures Work		X*	
		40		Safety Tasks for Structures Work		X*	
5	285			Contract Change Order Administration		X	
		05		Contract Change Order Process		X	
			05	Need for Contract Change Order Determination		X	

			10		Draft Contract Change Order		X	
			15		Contract Change Order Approval		X	
			20		Payments for Contract Change Order Work		X	
		10			Functional Support		X	
			05		Field Surveys for Contract Change Order		X	
			10		Staking for Contract Change Order		X	
			15		Other Functional Support		X	
5	290				Resolve Contract Claims		X	
		05			Analysis of Notices of Potential Claims		X	
		10			Supporting Documentation and Responses to Notices of Potential Claims		X	
		15			Reviewed and Approved Claim Report		X	
		20			District Claim Meeting or Board of Review		X	
		25			Arbitration Hearing		X	
		30			Negotiated Claim Settlement		X	
		35			Technical Support		X*	
5	295				Accept Contract, Prepare Final Construction Estimate, and Final Report		X	
		05			Processed Estimate After Acceptance		X	
		10			Proposed Final Contract Estimate		X	
		15			As-Built Plans		X	
		20			Project History File		X	
		25			Final Report		X	
		30			Processed Final Estimate		X	
		35			Certificate of Environmental Compliance		X	
		40			Long Term Environmental Mitigation/Mitigation Monitoring After Construction Contract Acceptance		X	
		45			Post-Construction Traffic Operations Activities		X	
			05		Speed Survey Records		X	

			05	Speed Survey		X	
			10	Signed Speed Survey		X	
			10	Commission TMS Elements		X	
		99		Other Accept Contract/ Prepare Final Construction Estimate and Final Report		X	
4	300			FINAL RIGHT OF WAY ENGINEERING		X	
		05		Right of Way Monumentation		X	
			05	Right of Way Monumentation Survey		X	
			10	Filed Monumentation Record of Survey		X	
		10		Trial Exhibits and Testimony		X	
		25		Relinquishment and Vacation Maps		X	
		30		Deed Package for Excess Land Transactions		X	
		35		Right of Way Record Map		X	

NOTE: *STATE will assist TJPA, as a PROJECT cost, with these tasks. STATE alone will determine the extent of STATE's involvement for the selected tasks.



Cooperative Agreement

Attachment 2