

THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 7.4
FOR THE MEETING OF: July 15, 2010

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to enter into a Cooperative Agreement between the Transbay Joint Powers Authority (TJPA) and the State of California Department of Transportation (Caltrans), identifying design review and oversight services provided by Caltrans of certain Transbay Transit Center Program elements that affect the State right of way, and providing for TJPA reimbursement to Caltrans for the cost of a portion of such services, not to exceed \$300,000 and for a term to commence on the effective date of the Agreement and to terminate on December 31, 2018, unless extended by the parties or earlier terminated.

SUMMARY:

Five elements of the Transbay Program will be constructed within or abutting the State right of way. Due to the close proximity of these Program elements to State right of way, the TJPA and the State have agreed to cooperate in the design review and oversight process.

Staff has negotiated a Cooperative Agreement (Agreement) with the Caltrans District 4 Office, identifying the design review and oversight services provided by Caltrans, and providing for TJPA reimbursement to Caltrans for the cost of a portion of the services, not to exceed \$300,000 and for a term to commence on the effective date of the Agreement and to terminate on December 31, 2018, unless extended by the parties or earlier terminated. Caltrans District 4 Office has presented the Agreement to Caltrans Headquarters for approval. Staff requests that the TJPA Board of Directors authorize the Executive Director to execute the Agreement with Caltrans.

The Program elements subject to the Agreement are as follows:

Bus Storage Facility — The Bus Storage Facility (BSF) will be located within the block bounded by Second, Third, Stillman, and Perry streets under Interstate 80 (I-80). The work will require the development of a dynamic modeling analysis, Project Study Report (PSR), airspace lease agreement, and encroachment permit.

New Bus Ramps — The new Bus Ramps will be constructed as a combination of at-grade and aerial alignments to connect the Transbay Transit Center and the BSF to I-80. The work will require the development of a PSR and encroachment permit.

Caltrain Downtown Extension (DTX) — The Caltrain Downtown Extension will cross under State right of way in a mined tunnel along Second Street and in an open-cut structure near Sixth Street adjacent to Interstate 280. The work will require the development of a PSR and encroachment permit.

Essex Street Transit Lane — The Essex Street Transit Lane will realign and widen the I-80 Essex Street on-ramp. The work will require an encroachment permit.

Existing Terminal and Ramps Demolition — Demolition of the existing Transbay Terminal includes the demolition of connecting bus ramps, viaducts, and select buildings along Howard and Natoma streets. The work will require an encroachment permit.

Under the Agreement, Caltrans will 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 Program. Caltrans will also provide design review and oversight services, in addition to IQA, for the five Program elements within or abutting the State right of way. TJPA will reimburse Caltrans for the cost of providing these additional review and oversight services at the hourly rates specified in the Agreement, up to \$300,000.

Caltrans has already provided a certain amount of IQA and other design review and oversight services to the TJPA, a portion of which cost would be subject to reimbursement by the TJPA under the Agreement. The Agreement provides that TJPA will reimburse Caltrans up to \$80,000 in Fiscal Year 2009-10 from the \$300,000 total allocation under the Agreement for the cost of such reimbursable services.

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, changes in the estimated cost of the Caltrans services that are subject to reimbursement under the Agreement.

ENCLOSURES:

1. Resolution
2. Cooperative Agreement

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to execute the Cooperative Agreement in the form attached to this report.

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Transit Center Program (Program) includes five distinct elements to be constructed within or abutting the State of California right of way – the Bus Storage Facility, the New Bus Ramps, the Caltrain Downtown Extension (DTX), the Essex Street Transit Lane, and the Existing Terminal and Ramps Demolition; and

WHEREAS, The California Department of Transportation (Caltrans) manages certain State right of way and State highway infrastructure, including Interstate 80 and Interstate 280; and

WHEREAS, The Program elements to be constructed within or abutting State right of way require Caltrans review and oversight during the design process and prior to their construction; and

WHEREAS, Caltrans is willing to provide Independent Quality Assurance (IQA) of the Program elements within or abutting the State of California right of way at no cost to the TJPA; and

WHEREAS, Caltrans is willing to provide additional design review and oversight services, in addition to the IQA, subject to reimbursement by the TJPA; and

WHEREAS, Caltrans has already provided a certain amount of IQA and design review and oversight services to the TJPA, and the TJPA is willing to reimburse Caltrans for a portion of the costs already incurred; and

WHEREAS, Staff has negotiated a Cooperative Agreement between the TJPA and Caltrans that identifies the IQA and other design review and oversight services to be provided by Caltrans for the five Program elements within or abutting the State right of way, at an amount not to exceed \$300,000, and describes the TJPA's agreement to reimburse Caltrans up to \$80,000 in Fiscal Year 2009-10 from the \$300,000 total allocation under the Agreement for the cost of certain reimbursable services already provided to the TJPA; and

WHEREAS, Under the Agreement, the 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 the TJPA must approve, in advance, changes in the 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 in the form attached, which stipulates a maximum compensation of \$300,000 and for a term to commence on the effective date of the Agreement and to terminate on December 31, 2018, unless extended by the parties or earlier terminated.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 15, 2010.

Secretary, Transbay Joint Powers Authority

COOPERATIVE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON _____, 2010, 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 designing a new Transit Center and associated facilities on the site of the current 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 nine transportation systems, including future High Speed Rail, under one roof. The projects listed below, collectively referred to herein as "PROJECT," are part of the Transbay Transit Center.
 - Bus Storage Facility
 - New Bus Ramps
 - Caltrain Downtown Extension (DTX)
 - Essex Street Transit Lane
 - Existing Terminal and East Loop Demolition

All elements of the PROJECT constructed within STATE's ultimate right of way pursuant to contracts administered by TJPA shall hereinafter be referred to as "IMPROVEMENTS."

3. TJPA is willing to fund one hundred percent (100%) of all capital and support costs for IMPROVEMENTS, except that the costs of STATE's Independent Quality Assurance (IQA) of PROJECT Plans Specifications and Estimates (PS&E) and Right of Way (R/W), if any, 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" and described in Exhibit A, attached to and made a part of this Agreement, for an estimated cost of \$300,000. STATE is agreeable to provide STATE SERVICES to TJPA as reimbursed work.
5. STATE has already provided to TJPA a certain amount of STATE SERVICES which is reimbursable by TJPA under this Agreement and a certain amount of IQA for the PROJECT, the cost of which is borne by STATE under this Agreement. The combined effort for prior STATE SERVICES and IQA, are to be referred to herein as "EARLY SERVICES."

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 Transit Center. The California Transportation Commission (CTC) has programmed \$7,391,000 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. This Agreement supplements, but does not supersede, any prior Memorandum of Understanding (MOU) or Cooperative Agreements relating to PROJECT, including the Cooperative Agreement between STATE, TJPA and the City and County of San Francisco for the Transbay Terminal Project, executed July 11, 2003 (District Agreement No. 4-1981-C), which by this reference is incorporated herein, that addresses right of way transfer from STATE to TJPA related to PROJECT.
8. 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. The Transbay Transit Center Program has full environmental clearance to proceed to design and construction.
9. IMPROVEMENTS construction, operation, and maintenance will be the subject of a separate future agreement.
10. The parties now define hereinbelow the terms and conditions under which IMPROVEMENTS are to be developed and designed and under which STATE SERVICES are to be performed by STATE as work reimbursed by TJPA.
11. On _____, 2010, the TJPA Board of Director's adopted Resolution No. _____, authorizing the TJPA's Executive Director to execute this Agreement with STATE.

SECTION I

TJPA AGREES:

1. To fund one hundred percent (100%) of all IMPROVEMENTS support costs, including but not limited to, design engineering costs and costs for preliminary engineering, except for costs of STATE's IQA.
2. To have STATE perform STATE SERVICES for IMPROVEMENTS as described on Exhibit A, at TJPA's expense.
3. To bear one hundred percent (100%) of the actual cost of STATE SERVICES, estimated to be \$300,000 as described in Exhibit A., STATE SERVICES that are performed after execution of this Agreement shall be authorized by TJPA in advance by way of Task Orders. STATE SERVICES that were performed as part of EARLY SERVICES shall be reimbursed without the required Task Order authorization. The hourly rate for STATE SERVICES described in Exhibit A shall include costs of providing personnel resources and their 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.

4. To deposit with STATE within twenty five (25) days of receipt of invoices therefore (which invoices will be forwarded immediately following execution of this Agreement) for prior expenditures for STATE SERVICES in the amount of \$80,000. This prior expenditure is within the scope and estimated budget described in Exhibit A.
5. To deposit with STATE within twenty five (25) days of receipt of invoices therefore (which invoices will be forwarded immediately following execution of this Agreement), the amount of \$20,000. Said figure represents TJPA's 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 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. To reserve the right to use STATE funds, as cited in Article 5, RECITALS as well as any additional future funds programmed by the CTC, for capital and support costs for IMPROVEMENTS.
10. All IMPROVEMENTS work performed by TJPA, or performed on TJPA's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such IMPROVEMENTS work shall be submitted to STATE for STATE's review, comment, concurrence, and/or approval at appropriate stages of development.
11. That changes to the San Francisco Oakland Bay Bridge (SFOBB) bridge system caused by the IMPROVEMENTS shall be reported to, and approved by the STATE. Furthermore, any changes to seismic response of the SFOBB caused by the IMPROVEMENTS will be reviewed by the STATE and the Toll Bridge Seismic Safety Peer Review Panel.
12. All IMPROVEMENTS work, except as set forth in this Agreement, is to be performed by TJPA. Should TJPA request that STATE perform any portion of IMPROVEMENTS or PROJECT work, except as otherwise 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.
13. To have detailed PS&E prepared, at no cost to STATE, and to submit to STATE for STATE's review, concurrence, and/or approval at appropriate stages of development. Final PS&E for IMPROVEMENTS shall be signed by a Civil Engineer registered in the State of California.

14. To consider any request by STATE to avoid a contract award or to discontinue 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.
15. Personnel who prepare the PS&E and environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of IMPROVEMENTS construction to discuss problems which may arise during PS&E, Right of Way, and construction phases of the IMPROVEMENTS and/or to make design revisions for contract change orders.
16. TJPA shall include a "conflict of interest" requirement in the IMPROVEMENTS design consultant contract(s) that prohibits the design consultant from being employed or under contract to the future IMPROVEMENTS construction contractor, except that the IMPROVEMENTS designer may be retained to check shop drawings, do soils foundation tests, test construction materials, and perform construction surveys.
17. To make written application to STATE for necessary encroachment permits authorizing entry of TJPA onto SHS right of way to perform IMPROVEMENTS work as more specifically defined elsewhere in this Agreement. TJPA shall also require TJPA's consultants and contractors to make written application to STATE for the same necessary encroachment permits.
18. To identify and locate all utility facilities within the area of IMPROVEMENTS as part of the design responsibility for IMPROVEMENTS. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for IMPROVEMENTS.
19. To identify and locate all high and low risk underground facilities within the IMPROVEMENTS area and to protect or otherwise provide for such facilities, all in accordance with STATE's "Manual on High and Low Risk Underground Facilities Within Highway Rights of Way." TJPA hereby acknowledges receipt of STATE's "Manual on High and Low Risk Underground Facilities Within Highway Rights of Way."
20. 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, at no cost to STATE.

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

21. To furnish evidence to STATE, in a form acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within SHS right of way and that such work will be completed prior to award of the contract to construct IMPROVEMENTS or as covered in the Special Provisions for said contract. This evidence shall include a reference to all required SHS encroachment permits.
22. TJPA shall require the utility owner and/or its contractors performing the relocation work within the SHS right of way to obtain a STATE encroachment permit prior to the performance of said relocation work.

23. To convert, if necessary, the STATE's electronic files to be transferred under the terms of this cooperative agreement, from Metric Units. Additionally, TJPA agrees to convert the horizontal datum and the vertical datum used for the generation of all such files transmitted by STATE. STATE shall not be responsible for the accuracy of any conversions.
24. All electronic working files to be transferred by STATE were generated prior to 2002, and are currently archived on file servers. TJPA shall reimburse STATE staff time for the un-archiving and editing of the working files to be transferred to TJPA, where such work is authorized by TJPA in advance by way of Task Orders and under the terms of this Agreement.
25. To convert the electronic files transmitted in the Bentley Microstation Format to the appropriate format used by the TJPA's consultants preparing the PS&E. STATE shall not be responsible for the loss of any data resulting from any conversions.
26. To independently verify the accuracy of the transmitted electronic files through field surveys and other methods if necessary. STATE shall not be held responsible for the accuracy of any transmitted electronic working file.

SECTION II

STATE AGREES:

1. At no cost to TJPA, to provide IQA of TJPA work for IMPROVEMENTS necessary for completion of the PS&E for IMPROVEMENTS, including, but not limited to, investigation of potential hazardous material sites and all right of way activities undertaken by TJPA or its designee, and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by TJPA, while cooperating in timely processing of documents necessary for completion of IMPROVEMENTS.
2. To perform STATE SERVICES for IMPROVEMENTS as described on Exhibit A, at TJPA's expense.
3. Upon execution of this Agreement, to submit an invoice in the amount of \$80,000 to AUTHORITY representing STATE's prior expenditures for STATE SERVICES.
4. Upon execution of this Agreement, to submit an invoice to TJPA for a deposit in the amount of \$20,000. Said deposit represents TJPA's estimated cost for two (2) months of STATE SERVICES.
5. As IMPROVEMENTS proceeds, 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.
6. 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.

7. 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.
8. 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.
9. To retain, or cause to be retained for audit by TJPA's 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.
10. Upon proper application by TJPA, and by TJPA's contractor, to issue, at no cost to TJPA and TJPA contractor, the necessary encroachment permits for required work within the SHS right of way as more specifically defined elsewhere in this Agreement.
11. To transfer to TJPA the electronic working files used for the preparation of the PS&E for the ongoing San Francisco-Oakland Bay Bridge West Approach Project, hereinafter referred to as West Approach Project. All transferred files shall be in the Bentley Microstation format.
12. To transfer the following working files, within the limits of the PROJECT:
 - As-built Topographic base map
 - Layouts of Westbound and Eastbound Interstate I-80 and I-280 in PROJECT area
 - As-built column locations
 - West Approach structural data
 - Additional information as requested

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. All obligations of TJPA are subject to the appropriation of resources by the Federal Transit Administration and the TJPA Board. The TJPA's liability under this Agreement shall be limited to the availability of funds certified by the TJPA Chief Financial Officer.
3. The parties hereto agree to develop and commit to a Management Plan that will include an organizational structure between the parties, a process to affirm decisions related to IMPROVEMENTS that affect PROJECT as well as a conflict resolution process.
4. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT administered by TJPA. This guidance includes prompt reviews by STATE to

assure that all work and products delivered or incorporated into the IMPROVEMENTS by TJPA conform with then existing STATE standards. IQA does not include any IMPROVEMENTS related work deemed necessary to actually develop and deliver the IMPROVEMENTS, nor does it involve any validation to verify and recheck any work performed by TJPA and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by TJPA under the terms of this Agreement or by third parties by reason of STATE's IQA activities.

Pursuant to this Agreement, all STATE SERVICES performed by STATE that is 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. The parties also agree that STATE SERVICES that were performed as part of EARLY SERVICES shall be reimbursed without the required Task Order authorization. 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.

5. In the event of a cost overrun, STATE and AUTHORITY 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.
6. The design and right of way acquisition (if any) for IMPROVEMENTS shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be considered by STATE for approval via the processes outlined in STATE's Highway Design Manual and appropriate memoranda and design bulletins published by STATE. In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on IMPROVEMENTS in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with TJPA in a timely manner regarding effect of proposed and/or required changes on IMPROVEMENTS.
7. TJPA agrees to obtain, as a PROJECT cost, all necessary permits, agreements, and/or approvals from appropriate regulatory agencies for IMPROVEMENTS, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said IMPROVEMENTS permits agreements, and/or approvals, those said costs shall be a PROJECT cost.
8. TJPA shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s), and/or approvals for IMPROVEMENTS. The costs of said compliance and implementation shall be a PROJECT cost.
9. If there is a legal challenge to the environmental documentation, including investigative studies and/or technical environmental report(s), permit(s), agreement(s), and/or approval(s), for IMPROVEMENTS, all legal costs for TJPA to defend STATE associated with those said legal challenges shall be a PROJECT cost.

10. If, during preparation of the PS&E, performance of right of way activities, or 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.
11. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for IMPROVEMENTS will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
12. The party that discovers Hazardous Material (HM) will immediately notify the other party to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires 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.
13. Unless specified otherwise in District Agreement No. 4-1981-C, STATE, independent of IMPROVEMENTS, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.
14. Unless specified otherwise in District Agreement No. 4-1981-C, if HM-2 is found within the limits of IMPROVEMENTS, the public agency responsible for advertisement, award, and administration (AAA) of the IMPROVEMENTS construction contract will be responsible for HM-2 management activities. Any management activity cost related to HM-2 is an IMPROVEMENTS construction cost.
15. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
16. A separate Cooperative Agreement will be required to cover responsibilities and funding for the construction phase of IMPROVEMENTS.
17. A separate agreement will be required to cover ongoing maintenance and operation of IMPROVEMENTS.
18. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not 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.

19. 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 under or in connection with any work, authority, or jurisdiction conferred upon TJPA or arising under this Agreement. It is understood and agreed that TJPA will fully defend, indemnify, and save harmless STATE and all of 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 under this Agreement.
20. 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 under or in connection with any work, authority, or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that STATE will fully defend, indemnify, and save harmless TJPA and all of 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 under this Agreement.
21. Prior to the commencement of any work pursuant to this Agreement, either STATE or TJPA may terminate this Agreement by written notice to the other party.
22. 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.
23. This Agreement shall terminate upon satisfactory completion of all post-IMPROVEMENTS construction obligations of TJPA and the delivery of required IMPROVEMENTS construction documents, with concurrence of STATE, or on December 31, 2018, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of IMPROVEMENTS be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.
24. TJPA acknowledges that STATE has already provided EARLY SERVICES. The total combined amount of EARLY SERVICES is estimated to be \$325,000 through June 30, 2010; STATE and TJPA have not yet fully determined and have yet to reach agreement on the portion of EARLY SERVICES expended as STATE SERVICES or as IQA. STATE and TJPA will continue to cooperate to reach agreement on percentage of EARLY SERVICES to be determined as reimbursable STATE SERVICES, or non-reimbursable IQA.

STATE acknowledges if that portion of EARLY SERVICES that is reimbursable to STATE as STATE SERVICES exceeds the \$80,000 TJPA budgeted for STATE SERVICES in Fiscal Year 2009-2010, as stated under Article 4 of Section I, TJPA will budget and pay for such difference in Fiscal Year 2010-2011.

Notwithstanding the foregoing, STATE and TJPA acknowledge and agree that the portion of EARLY SERVICES defined as STATE SERVICES, are part of and makes up a portion of the estimated \$300,000, estimated in Exhibit A of this Agreement, for STATE to provide STATE SERVICES under this Agreement.

25. In the event that STATE and TJPA are unable to reach agreement on the portion of EARLY SERVICES that were expended as STATE SERVICES and to be reimbursed to STATE by TJPA, STATE and TJPA agree to participate in mediation in good faith and will share equally in its costs.

STATE OF CALIFORNIA
Department of Transportation

TRANSBAY JOINT POWERS AUTHORITY

CINDY MCKIM
Director

MARIA AYERDI-KAPLAN

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 Cost Proposal for State Services in oversight of Transbay Transit Center Project

Description			Estimated Hours	Hours by Project Element	Total Dollars by Project Element
		Rate	\$ 103.00		
			2913		
Caltrain Downtown Extension	EA 04-0G250K, SD: 6DTX.		1204	1,204	\$ 124,000.00
* Structure analysis of the tunneling and mining activities' impact on State's facility				-	\$ -
* Participation in field assessments				-	\$ -
* The review and approval of Structure Type Selection				-	\$ -
* Providing technical consultations during the development of the PS&E				-	\$ -
* Providing technical assistance during construction.				-	\$ -
* Participation in Value Analysis studies				-	\$ -
				-	\$ -
				-	\$ -
Bus Storage Facility	EA 04-0G250K, SD: 6BSF		1165	1,165	\$ 120,000.00
* Structural Analysis of State's facility due to impacts of excavations.				-	\$ -
* Participation in field assessments				-	\$ -
* The review and approval of Structure Type Selection				-	\$ -
* The analysis of project elements including retaining walls, column protection measures & etc.				-	\$ -
* Providing technical consultations during the development of the PS&E				-	\$ -
* Providing technical assistance during construction				-	\$ -
				-	\$ -
Essex Street Transit lane	EA 04-0G250K, SD: 6ESSEX		10	10	\$ 1,000.00
* Detailed Operational Analysis				-	\$ -
* Detailed Geometric Review				-	\$ -
				-	\$ -
New Bus Ramp	EA 04-0G250K, SD: 6RAMPS		534	534	\$ 55,000.00
* Structure analysis of the Bus Ramps' impact on State's facility				-	\$ -
* Participation in field assessments				-	\$ -
* The review and approval of Structure Type Selection				-	\$ -
* Providing technical consultations during the development of the PS&E				-	\$ -
* Providing technical assistance during construction.				-	\$ -
* Participation in Value Analysis studies				-	\$ -
				-	\$ -
				-	\$ -
				-	\$ -
			2913	2913	
			\$300,000.00	TOTAL ESTIMATE	\$ 300,000.00