

AGREEMENT FOR SFOBB TOLL OPERATIONS BUILDING

THIS AGREEMENT, ENTERED INTO EFFECTIVE _____, 2010 is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter referred to as "DEPARTMENT," and the BAY AREA TOLL AUTHORITY (BATA) their successors and assigns, hereinafter referred to herein as "AUTHORITY."

RECITALS

1. AUTHORITY was created pursuant to section 30950 *et seq.* of the California Streets and Highways Code (SHC), which statute also transferred certain California Transportation Commission (CTC) and DEPARTMENT responsibilities for the disposition of toll revenues collected from patrons using toll bridges owned and operated by the DEPARTMENT in the San Francisco Bay Area.
2. DEPARTMENT and AUTHORITY, pursuant to Streets and Highways Code section 30952, are authorized to enter into a Cooperative Agreement for improvements to the BRIDGES within AUTHORITY's jurisdiction.
3. DEPARTMENT's toll bridges (identified in SHC Section 30910) within AUTHORITY's jurisdiction are the Antioch Bridge, Benicia-Martinez Bridges, Carquinez Bridges, Dumbarton Bridge, Richmond-San Rafael Bridge, San Francisco-Oakland Bay Bridge (SFOBB) and San Mateo-Hayward Bridge, hereinafter collectively referred to as "BRIDGES."
4. DEPARTMENT and AUTHORITY previously entered into a Cooperative Agreement relating to BRIDGES dated effective as of April 25, 2006 (District Agreement No. 4-2078, Document No. 016237), referred to herein as the "Master Cooperative Agreement."
5. DEPARTMENT and AUTHORITY intend to replace the existing toll operations building at the San Francisco-Oakland Bay Bridge (SFOBB) with a newly designed and constructed Toll Operations Building, retrofit a portion of the existing facility limited to the basement, interface wiring for electronics, electrical and communications between toll booths, toll canopy and the new operations building, demolish the remainder of the existing facility and create associated site civil improvements, referred to herein as "PROJECT." AUTHORITY will fund one hundred percent (100%) of all capital outlay and staffing costs of PROJECT, subject to and consistent with AUTHORITY's adopted budget.
6. DEPARTMENT is the CEQA and NEPA lead agency for the proposed PROJECT.
7. DEPARTMENT prepared and approved a categorical exemption/categorical exclusion for PROJECT on September 7, 2001.
8. AUTHORITY intends to prepare Plans, Specifications & Estimates (PS&E), right of way (R/W) activities and construction for PROJECT.

9. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or any agreement relating to PROJECT.
10. DEPARTMENT and AUTHORITY wish to partner together toward a timely completion of PROJECT and wish to define herein the terms and conditions under which PROJECT is to be designed, financed, constructed, owned, operated and maintained.

SECTION I

AUTHORITY AGREES:

1. To fund one hundred percent (100%) of all PROJECT PS&E, R/W activities and construction capital and support costs required for satisfactory completion of PROJECT, including, but not limited to, State-furnished materials (SFM), source inspection, and mandated California State Building Code inspections detailed in section III of this Agreement subject to and consistent with AUTHORITY's adopted budget.
2. To complete the PS&E, R/W and Construction phases for PROJECT.
3. That all PROJECT work performed by AUTHORITY, or performed on AUTHORITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures and standards that DEPARTMENT would normally follow, as applicable, that are consistent with industry standards. All such PROJECT work shall be submitted, as applicable, to DEPARTMENT for DEPARTMENT's review, comment, and concurrence at appropriate stages of development.
4. That all PROJECT work, except as set forth in this Agreement, is to be performed by AUTHORITY. Should AUTHORITY request that DEPARTMENT perform any portion of PROJECT work, except as otherwise set forth in this Agreement, AUTHORITY shall first agree to reimburse DEPARTMENT for such work pursuant to an amendment to this Agreement or a separate executed agreement.
5. To submit the PS&E to DEPARTMENT for DEPARTMENT's review and concurrence at appropriate stages of development. The final plans, and technical specifications shall be signed on behalf of AUTHORITY by a Civil Engineer and Architect registered in the State of California.
6. To permit DEPARTMENT to monitor and participate on the selection of personnel who will prepare the PS&E, provide R/W services, and perform construction administration for PROJECT. AUTHORITY agrees to consider any request by DEPARTMENT to avoid a contract award or to discontinue services of any personnel considered by DEPARTMENT to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
7. To warrant that the design consultant will not be employed or under contract to the future PROJECT construction contractor.
8. To identify and locate all utility facilities within the area of PROJECT as part of the design responsibility for PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for PROJECT.
9. To furnish evidence to DEPARTMENT, in a form acceptable to DEPARTMENT, 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 PROJECT or as covered in the PS&E for said contract. This evidence shall include a reference to all required SHS encroachment permits.

10. If any existing utility facilities conflict with the construction of PROJECT or violate DEPARTMENT's encroachment policy, AUTHORITY shall make all necessary arrangements with the owners of such facilities for their timely accommodation, protection, relocation, or removal.

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

11. To make written application to DEPARTMENT for necessary encroachment permits authorizing entry of AUTHORITY onto SHS right of way to perform required work as more specifically defined elsewhere in this Agreement. The contractor for the permittee and any third party agent (including but not limited to contractors, consultants, and utility owners) must obtain an encroachment permit issued in their name and shall apply for a no-fee Encroachment Permit for the work authorized therein along with proof of a bond acceptance by AUTHORITY, prior to performing any work within the SHS R/W.
12. To advertise, award, and administer the construction contract for PROJECT in accordance with requirements of the California Public Contracts Code and the California Labor Code, including prevailing wage provisions. Workers employed in the performance of work contracted for by AUTHORITY, and/or performed under encroachment permit, are covered by provisions of the California Labor Code in the same manner as are workers employed by DEPARTMENT's contractors. The use of any Federal funds towards PROJECT construction will mandate the inclusion and enforcement of all applicable Federal labor mandates.
13. To construct PROJECT in accordance with the PS&E prepared by AUTHORITY or AUTHORITY's consultants and concurred with by DEPARTMENT and in concurrence with the 2007 California Building Standards Code.
14. To submit a written request for SFM identified in the PROJECT PS&E a minimum of forty-five (45) days in advance of the need for such materials. To then pay DEPARTMENT, within fifteen (15) days of receipt of DEPARTMENT's billing, the actual cost invoiced for the requested SFM. AUTHORITY may take delivery of the SFM after DEPARTMENT's receipt of AUTHORITY's payment at the location directed by DEPARTMENT.
15. That construction by AUTHORITY of those portions of PROJECT which lie within the SHS right of way shall not commence until AUTHORITY's contract plans involving such work, the utility relocation plans, and the right of way certification have been reviewed and accepted by DEPARTMENT and encroachment permits have been issued to AUTHORITY and AUTHORITY's contractor.
16. That AUTHORITY's construction contractor shall maintain in force, until completion and acceptance of the 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 DEPARTMENT's then effective Standard Specifications. Such policy shall contain an additional insured endorsement naming DEPARTMENT 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 DEPARTMENT which shall be delivered to DEPARTMENT before the issuance of an encroachment permit to AUTHORITY's construction contractor.

17. To require the construction contractor to furnish both a payment and a performance bond, naming AUTHORITY as obligee with both bonds complying with the requirements set forth in Section 3-1.02 of DEPARTMENT's current Standard Specifications prior to performing any PROJECT construction work.
18. To add DEPARTMENT and its Directors, officers, and employees as additional indemnitees in contract provisions providing for indemnification to AUTHORITY under the construction documents and specifications in AUTHORITY's Invitation for Bid for PROJECT.
19. That contract administration procedures shall conform to DEPARTMENT's Construction Manual Supplement for Local Agency Resident Engineers, Department's Building Construction Manual and Local Agency Structure Representative Guidelines and the PROJECT encroachment permits.
20. That PROJECT material testing and Quality Control/Assurance shall be included in the PS&E package and reviewed and accepted as part of the PS&E review by the DEPARTMENT for conformance to DEPARTMENT standards.
21. To furnish, at AUTHORITY's expense a field site representative who is a licensed civil engineer in the State of California to perform the functions of a Resident Engineer. The Resident Engineer shall not be an employee or subcontractor of the entity, if any, that prepared the PROJECT PS&E or an employee of the construction contractor.
22. At AUTHORITY's expense, to furnish sufficient qualified support staff to assist the Resident Engineer in, but not limited to, 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 the PROJECT PS&E, 2007 California Building Standards Code, Department's Building Construction Manual and Local Agency Structure Representative Guidelines and the PROJECT encroachment permits. Said qualified support staff shall be independent of the design engineering company and construction contractor.
23. AUTHORITY to provide an organization chart and contact list for resolution of PROJECT issues and emergency response that has appropriate responsible AUTHORITY personnel listed.
24. Within one hundred eighty (180) days following the completion and acceptance of the PROJECT construction contract, to furnish DEPARTMENT with a complete set of full scale "As-Built" plans, revised specifications, electronic CADD files. The submittal must also include all DEPARTMENT requested contract records, including survey documents and Records of Surveys (to include monument perpetuation per the Land Surveyor Act, section 8771). AUTHORITY shall also submit corrected full-sized hardcopy structure plans.
25. If AUTHORITY cannot complete PROJECT as originally scoped, scheduled, and estimated, AUTHORITY will, only with DEPARTMENT's prior written consent, amend the PROJECT PS&E for a suitable resolution to ensure an alternate form of modified PROJECT that will, at all times, provide a safe and operable SHS.

26. To provide a Construction Zone Enhancement Enforcement Program (COZEEP) by contracting directly with the California Highway Patrol (CHP) for all traffic restrictions as outlined in DEPARTMENT's Construction Manual.
27. If unanticipated cultural, archaeological, paleontological or other protected materials are encountered during PROJECT construction, AUTHORITY 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. AUTHORITY will notify DEPARTMENT within twenty-four (24) hours of any discovery. The costs for any removal or protection of that material shall be covered as a PROJECT cost contemplated by this Agreement.
28. That AUTHORITY's Resident Engineer shall review and coordinate Contractor's schedule of deliveries with DEPARTMENT's Representative at least 24 hours in advance of delivery to ensure that deliveries will not degrade the performance of the carpool lanes during carpool hours. AUTHORITY's Resident Engineer to obtain 48 hour advanced approval from the DEPARTMENT's representative for lane closures.
29. To include DEPARTMENT in construction progress meetings and to provide two weeks' prior notice of upcoming work to DEPARTMENT.
30. To adopt an annual budget by July 1st of each fiscal year, which includes DEPARTMENT's costs associated with PROJECT. Costs are defined as including all documented direct and indirect charges together with functional and administrative overhead charges authorized by the State Administrative Manual as part of DEPARTMENT's standard accounting practice. Each budget shall be subject to regular review and revision during the year as appropriate and shall contain funds to cover unanticipated efforts to be undertaken by DEPARTMENT as may be required for PROJECT.
31. That all mutually-agreed upon costs associated with the relocation and facility replacement for the SFOBB Administrative Staff shall be borne by AUTHORITY.
32. On a monthly basis and within four (4) working days of the receipt of DEPARTMENT's request for advance funding as described in Article 7 of Section II, AUTHORITY will electronically transfer (wire) to DEPARTMENT, funds equal to the amount approved for eligible PROJECT costs incurred or anticipated, subject to the provisions of Article 32 of Section I of this Agreement.
33. Upon receipt of DEPARTMENT's detailed expenditure report, AUTHORITY will endeavor to notify DEPARTMENT in writing within thirty (30) days of those charges with which AUTHORITY disagrees by issuing a specific notice of discrepancy.
34. To take all necessary precautions for safe operation of AUTHORITY's vehicles, the construction contractor's equipment and vehicles and/or vehicles of personnel retained by AUTHORITY to assure the protection of the traveling public and DEPARTMENT employees from injury and damage from such vehicles or equipment.
35. During the construction phase, to provide DEPARTMENT forty eight (48) hours' advanced notification to inspect work prior to:
 - Footing and foundation pours (reinforcing steel in place)
 - Concrete slab and under-floor
 - Frame
 - Covering electrical, plumbing or mechanical work
 - Gypsum board and composite metal paneling installation
 - Roof installation

- Energy efficiency compliance
- Handicap compliance
- Final Inspection

Work found to be inconsistent with the PS&E or building codes shall not proceed until corrected by AUTHORITY and approved by DEPARTMENT.

36. To provide forty-eight (48) hours' advanced notification to DEPARTMENT prior to connecting to, or the hook-up of:
- Gas lines;
 - Electrical service; and/or
 - Water and sewer services.

SECTION II

DEPARTMENT AGREES:

1. To provide IQA and oversight at AUTHORITY's expense of all work necessary for completion of the PS&E, R/W and construction for PROJECT done by AUTHORITY within SHS R/W, including, but not limited to, investigation of potential hazardous material sites and all right of way activities undertaken by AUTHORITY or its designee, and provide reviews, comments, concurrence, and/or approvals as appropriate, of submittals by AUTHORITY, while cooperating in timely processing of documents necessary for completion of the PS&E, R/W and construction for PROJECT.
2. To provide source inspection during construction for PROJECT at AUTHORITY's expense.
3. To provide for AUTHORITY's review and consideration a budget proposal for DEPARTMENT's PROJECT costs for the upcoming fiscal year no later than May 1st of the prior fiscal year. Budget proposal shall be itemized as mutually agreed upon by DEPARTMENT and AUTHORITY. If DEPARTMENT fails to provide a timely budget proposal, AUTHORITY may propose on DEPARTMENT's behalf, a budget that sets forth AUTHORITY's best estimate of DEPARTMENT's anticipated costs.
4. To issue, upon proper application, as described in Article 21 of Section III, and at no cost to AUTHORITY, an encroachment permit required for work within SHS R/W.
5. To provide, at AUTHORITY's cost, SFM as requested by AUTHORITY and determined by DEPARTMENT to be appropriate and available during construction of PROJECT. Upon receipt of AUTHORITY's request for any such SFM, DEPARTMENT will order those materials and DEPARTMENT's Project Manager will have an invoice submitted to AUTHORITY for the costs of those materials. Upon receipt of those materials and AUTHORITY's payment, DEPARTMENT will make those SFM available to AUTHORITY at a DEPARTMENT designated site.
6. To invoice AUTHORITY for the cost of all PROJECT related work performed by DEPARTMENT, subject to and consistent with AUTHORITY's adopted PROJECT budgets.
7. To provide AUTHORITY a monthly request for thirty (30) days' advance funding based upon DEPARTMENT's estimate of the anticipated PROJECT costs that will be incurred by DEPARTMENT in performance of this Agreement. DEPARTMENT will provide AUTHORITY, along with the estimate, DEPARTMENT's published electronic fund transfer (EFT) invoice schedule. DEPARTMENT will submit, within thirty (30) days after submission of each funding advance request, a detailed expenditure report for the

charges contained therein, including PROJECT closeout adjustments within the adopted budget. Each succeeding monthly estimate will be adjusted to reflect actual PROJECT costs expended and any reallocations or additional costs anticipated over that succeeding month.

8. Upon receipt of a notice of invoice discrepancy from AUTHORITY, DEPARTMENT shall review the notice and credit undisputed claims to AUTHORITY in its following invoice. If DEPARTMENT disputes any discrepancy claim, in whole, or in part, DEPARTMENT shall endeavor to notify AUTHORITY in writing within seven (7) working days of receipt of the notice of invoice discrepancy. Upon final resolution of a disputed claim, DEPARTMENT shall make the appropriate credit or debit to AUTHORITY's account and notify AUTHORITY in writing of any such action.
9. To provide to AUTHORITY a detailed fiscal year-end accounting of expended and accrued PROJECT costs within sixty (60) days of the end of each fiscal year with supporting information.

SECTION III

IT IS MUTUALLY AGREED:

1. All obligations of DEPARTMENT 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. AUTHORITY may retain such consultants and contractors as AUTHORITY determines to be necessary or AUTHORITY and DEPARTMENT may jointly determine that DEPARTMENT is best suited to perform certain project management and construction management services to support the PROJECT.
3. That DEPARTMENT's IQA is defined as providing DEPARTMENT policy and procedural guidance through to completion of the PROJECT PS&E, R/W and construction phases administered by AUTHORITY. This guidance includes prompt reviews by DEPARTMENT to assure that all work and products delivered or incorporated into the PROJECT by AUTHORITY conform with then existing DEPARTMENT standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT.
4. That issuance of an encroachment permit to AUTHORITY by DEPARTMENT is indication that the contract plans and specifications have been reviewed and approved by the DEPARTMENT as being substantially compliant with current building codes, except for fire-life safety and accessibility, for which the approval of the State Fire Marshal and Division of State Architect, respectively, shall be submitted to DEPARTMENT by AUTHORITY.
5. No environmental permits, agreements, and/or approvals are anticipated for PROJECT. If, during performance of PROJECT PS&E, R/W and construction, new information is obtained which requires environmental permits, agreements and/or approvals, AUTHORITY will prepare any needed applications for DEPARTMENT's review, comment and approval and DEPARTMENT will obtain the needed permits, agreements, or approvals. The costs of obtaining PROJECT permits, agreements, and/or approvals shall be paid for by AUTHORITY, as a PROJECT cost.

6. AUTHORITY 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 environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost. Further, DEPARTMENT will consult with AUTHORITY on those environmental commitments before DEPARTMENT makes a final decision regarding the environmental commitments.
7. If, during performance of PROJECT PS&E, R/W and construction, new information is obtained which requires additional environmental documentation to comply with the California Environmental Quality Act (CEQA) and if applicable the National Environmental Policy Act (NEPA), DEPARTMENT, as a PROJECT cost, will prepare such documentation.
8. 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 PROJECT that are exempt from disclosure under the California Public Records Act 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.
9. During PROJECT construction, representatives of AUTHORITY and DEPARTMENT will cooperate and consult with each other to assure that all PROJECT work is accomplished according to the PROJECT PS&E and DEPARTMENT's then applicable policies, procedures, standards, and practices. Satisfaction of these requirements shall be verified by DEPARTMENT's IQA representatives who are authorized to enter the PROJECT site during construction for the purpose of monitoring and coordinating construction activities.
10. PROJECT PS&E changes to the design as accepted by the DEPARTMENT during the final PS&E review shall be reviewed and approved by DEPARTMENT representatives in a timely fashion. Proposed Contract Change Orders (CCOs) submitted in writing by AUTHORITY and confirmed receipt by the DEPARTMENT shall be approved, rejected or responded to with comments in writing within two calendar weeks, except as otherwise mutually agreed upon by the DEPARTMENT and the AUTHORITY. All approved CCOs shall be shown on the "As Built" plans. CCO authorized as provided herein will not require an encroachment permit rider.
11. AUTHORITY shall provide a construction contract claims process acceptable to DEPARTMENT and shall process any and all claims through AUTHORITY's claims process. DEPARTMENT's representative will be made available to AUTHORITY to provide advice and technical input in any claims process.
12. In the event that DEPARTMENT proposes and/or requires a change in design standards, implementation of those new or revised design standards shall be done in accordance with DEPARTMENT's Highway Design Manual, Section 82.5, "Effective Date for Implementing Revisions to Design Standards." DEPARTMENT shall consult with AUTHORITY in a timely manner regarding the effect of proposed and/or required PROJECT changes.
13. 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 PROJECT 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 PROJECT.

14. DEPARTMENT, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. DEPARTMENT will undertake HM-1 management activities at AUTHORITY's cost with minimum impact to PROJECT schedule.

DEPARTMENT has no responsibility for management activities or costs associated with HM-1 found outside the existing SHS right of way. If HM-1 is found outside existing SHS right of way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. AUTHORITY, in concert with the local agency having land use jurisdiction over the parcel(s), will ensure that HM-1 management activities are undertaken with minimum impact to PROJECT schedule. Independent of PROJECT, all costs for HM management activities related to HM-1 found outside of the existing SHS right of way will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.

If HM-2 is found within the limits of PROJECT, AUTHORITY will be responsible for HM-2 management activities. Any management activity cost related to HM-2 is a PROJECT 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. DEPARTMENT and AUTHORITY shall coordinate public information functions and will provide each other the opportunity to comment on meeting advertisements, agendas, exhibits, handouts, and materials at least ten (10) days prior to publication and use.
17. DEPARTMENT and AUTHORITY will manage the schedule for PROJECT through the work plan agreed to by both and included in a PROJECT Management Plan. PROJECT Management Plan is a group of documents used to guide a project's execution and control throughout the project's lifecycle, which AUTHORITY will provide prior to commencement of work.
18. AUTHORITY shall obtain an encroachment permit through the office of DEPARTMENT's District Permit Engineer and AUTHORITY's application shall be accompanied by six (6) sets of reduced construction plans and specifications for PROJECT and a DEPARTMENT approved project specific QMP, if required. Receipt by AUTHORITY of the approved encroachment permit shall constitute AUTHORITY's authorization from the DEPARTMENT to proceed with work to be performed by AUTHORITY at the PROJECT site.
19. AUTHORITY's contractor(s) shall also be required to obtain encroachment permits from DEPARTMENT prior to commencing any work within State right of way or which affects DEPARTMENT's facilities. Applications by AUTHORITY's contractor(s) for said encroachment permits shall be made through the office of DEPARTMENT's District Permit Engineer and shall include proof said contractor(s) have acceptable and adequate payment and performance surety bonds covering construction of PROJECT.
20. If AUTHORITY terminates the PROJECT prior to completion, DEPARTMENT shall require AUTHORITY, at AUTHORITY's expense, to return the SHS R/W to its original

condition or to a safe and operable condition acceptable to DEPARTMENT. If AUTHORITY fails to do so, DEPARTMENT reserves the right to finish PROJECT or place PROJECT in a safe and operable condition and DEPARTMENT will bill AUTHORITY for all reasonable and actual expenses incurred and AUTHORITY agrees to pay said bill within thirty (30) days of receipt.

21. AUTHORITY shall notify DEPARTMENT 30 calendar days in advance of any activities, such as relocation of staff or equipment, for which the DEPARTMENT is responsible, and for DEPARTMENT's completion of those activities. Where the DEPARTMENT fails to meet the timeline for those activities once prior notice is given and risks delaying the Construction schedule, AUTHORITY may use its own forces to complete those activities.
22. Upon acceptance of Construction, DEPARTMENT shall own said PROJECT, including all improvements constructed and equipment installed pursuant to PROJECT and will thereafter be responsible for the maintenance, repair, and replacement thereof using AUTHORITY toll funds, except such toll collection equipment and systems which will be owned operated and maintained by AUTHORITY as described in section III, article 7 of the Master Agreement between DEPARTMENT and AUTHORITY dated April 25, 2006. Further, when PROJECT is accepted by DEPARTMENT, unless otherwise agreed, AUTHORITY shall have no further responsibility for PROJECT with the exception of providing funds for the maintenance, operation, and repair, including the maintenance, repair, and replacement of all improvements constructed and equipment installed pursuant to PROJECT, subject to and consistent with AUTHORITY's adopted budget.
23. Following DEPARTMENT's acceptance of PROJECT, DEPARTMENT agrees to consult with AUTHORITY prior to making major physical changes to PROJECT components.
24. 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.
25. Neither DEPARTMENT 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 AUTHORITY under or in connection with any work, authority or jurisdiction conferred upon AUTHORITY under this Agreement. It is understood and agreed that AUTHORITY shall fully defend, indemnify and save harmless DEPARTMENT 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 and other theories or assertions of liability occurring by reason of anything done or omitted to be done by AUTHORITY under this Agreement.
26. Neither AUTHORITY 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 DEPARTMENT under or in connection with any work, authority or jurisdiction conferred upon DEPARTMENT under this Agreement. It is understood and agreed that DEPARTMENT shall fully defend, indemnify and save harmless AUTHORITY 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 and other theories or assertions of liability occurring by reason of anything done or omitted to be done by DEPARTMENT under this Agreement.

- 27. Prior to the commencement of any activity for the PROJECT, either DEPARTMENT or AUTHORITY may terminate this Agreement by written notice to the other party and amending this Agreement.
- 28. 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.
- 29. Those portions of this Agreement pertaining to the completion of PROJECT shall terminate upon the satisfactory completion of all post-construction obligations of AUTHORITY and the delivery of required PROJECT construction , with concurrence of DEPARTMENT, or on December 31, 2015, 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 PROJECT 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 claims are settled, dismissed or paid.

STATE OF CALIFORNIA
Department of Transportation

BAY AREA TOLL AUTHORITY
101 8th Street, Oakland, CA 95023

RANDELL H. IWASAKI
Director

By: _____
Bijan Sartipi, District Director

By: _____
Steve Heminger, Executive Director

Approved as to form and procedure:

Approved as to form and procedure:

By: _____
Attorney, Department of Transportation

By: _____
BATA Counsel

Certified as to budgeting of funds: :

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and the purpose of payment stated in this Agreement.

By: _____
District 4 Budget Manager

Certified as to financial terms and conditions:

By: _____
Chief Financial Officer, BATA

Accounting Administrator

