



RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AGREEMENTS AND DOCUMENTS REQUIRED FOR UTILITIES AND THE RIGHT-OF-WAY ACQUISITION FOR THE YERBA BUENA ISLAND SOUTHGATE ROAD REALIGNMENT IMPROVEMENTS PROJECT, INCLUDING OFFERS TO PURCHASE FOR AN AGGREGATE AMOUNT NOT TO EXCEED \$5,534,760 AND A GRATUITOUS SERVICES AGREEMENT, ALL WITH THE UNITED STATES COAST GUARD, AND UTILITY AGREEMENTS WITH VARIOUS PROVIDERS IN AN AMOUNT NOT TO EXCEED \$750,000, AND TO EXECUTE ALL AGREEMENTS, DOCUMENTS AND DEEDS REQUIRED TO TRANSFER THE ACQUIRED RIGHT-OF-WAY TO THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND THE TREASURE ISLAND DEVELOPMENT AUTHORITY, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AGREEMENT PAYMENT TERMS AND NON-MATERIAL AGREEMENT TERMS AND CONDITIONS

WHEREAS, At its March 19, 2019 meeting, the Board gave final approval for the Executive Director to execute various agreements for the Yerba Buena Island Southgate Road Realignment Improvements Project (Project), including license agreements with the United States (U.S.) Coast Guard and amendments to the right-of-way and construction Memorandums of Agreements (MOAs) with the Treasure Island Development Authority (TIDA); and

WHEREAS, The amendment to the right-of-way MOA included an amount not to exceed \$5,534,760 for right-of-way property acquisition, and there are now additional agreements required for utilities and to acquire right-of-way and prepare the Project for construction; and

WHEREAS, TIDA has requested that the Transportation Authority take these actions to satisfy right-of-way certification conditions prior to issuing an invitation to bid for construction,



anticipated in July; and

WHEREAS, There are two Offers to Purchase anticipated to be executed for a total amount not to exceed \$5,534,760, with the first Offer to Purchase for the acquisition of the U.S. Coast Guard property Quarters 8 and 9 and the second Offer to purchase for additional property following its placement on the U.S Coast Guard's divesture list; and

WHEREAS, There is also a Gratuitous Services Agreement which will allow for the removal of lead contaminated soil identified on the U.S. Coast Guard property and which will be completed as part of the construction of the Project; and

WHEREAS, Following the Transportation Authority's acquisition of the property, the majority of the property will be transferred to TIDA as soon as practicable and the remaining portion will be transferred to the California Department of Transportation (Caltrans) after construction of the Project is complete; and

WHEREAS, The property acquisition is contingent upon the authorization of federal, state and regional grant funds, currently expected in June 2019; and

WHEREAS, There are several utility agreements that will need to be entered into with various providers in order to accommodate future TIDA redevelopment plans and tolling systems efforts, including the following: Pacific Gas & Electric (gas), AT&T (cables), Comcast (cables), San Francisco Public Utilities Commission (electrical), City and County of San Francisco Department of Technology (tolling system fiber), and could include additional City departments; and

WHEREAS, The total cost for the utility agreements is estimated at 750,000 and is included in the Project budget of \$51,030,807; and

WHEREAS, The right-of-way acquisitions are included in the Transportation Authority's Fiscal Year 2018/19 mid-year budget amendment and will be funded with federal Highway Bridge Program, state Prop 1B, Bay Area Toll Authority or TIDA funds specifically designated for the



Project; and

WHEREAS, All obligations assumed by the Transportation Authority under the Offers to Purchase are deemed to be Transportation Authority Right-of-Way Costs, subject to TIDA's reimbursement obligation pursuant to the existing right-of-way MOA with TIDA; and

WHEREAS, TIDA shall indemnify the Transportation Authority and assume all liabilities incurred from entering into the agreements; and

WHEREAS, At its April 24, 2019 meeting, the Citizens Advisory Committee was briefed on the subject request and adopted a motion of support for the staff recommendation; now, therefore, be it

RESOLVED, That the Transportation Authority authorizes the Executive Director to execute agreements and documents required for utilities and the right-of-way property acquisition for the Project, including offers to purchase for an aggregate amount not to exceed \$5,534,760 and a gratuitous services agreement, all with the U.S. Coast Guard, and utility agreements with various providers in an amount not to exceed \$750,000, and to execute all agreements, documents and deeds required to transfer the acquired right-of-way to Caltrans and TIDA; and be it further

RESOLVED, That the Executive Director is hereby authorized to negotiate agreement payment terms and non-material agreement terms and conditions; and be it further

RESOLVED, That for the purposes of this resolution, "non-material" shall mean agreement terms and conditions other than provisions related to the overall agreement amount, terms of payment, and general scope of services; and be it further

RESOLVED, That notwithstanding the foregoing and any rule or policy of the Transportation Authority to the contrary, the Executive Director is expressly authorized to execute agreements and amendments to agreements that do not cause the total agreement value, as approved herein, to be exceeded and that do not expand the general scope of services.



Attachments (3):

1. First Offer to Purchase for Quarters 8 and 9
2. Gratuitous Services Agreement
3. Map of parcels

## Attachment 1: First Offer to Purchase for Quarters 8 and 9

### OFFER TO PURCHASE BETWEEN SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY AND UNITED STATES OF AMERICA

SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY (“**Authority**” or “**Purchaser**”), hereby offers to purchase, in cash and for fair market value, the federal real property generally located on Yerba Buena Island, City of San Francisco, State of California, including improvements thereon, described in **Exhibit A** (Draft Quitclaim Deed) attached hereto and incorporated herein (the “**Property**”), from the UNITED STATES OF AMERICA (the “**Government**”), on the terms and subject to the conditions set forth herein (the “**Offer**”). The Property is currently controlled by the U.S. Coast Guard (“Coast Guard”), which has determined that the conveyance of the land and improvements described in the Draft Quitclaim Deed shall not diminish the mission capacity of the Coast Guard, but instead shall further the mission capability of the Coast Guard with regard to military family housing or unaccompanied housing.

#### TERMS AND CONDITIONS

1. **PURCHASE PRICE.** The Purchaser shall pay the Government for said Property the purchase price of Three Million Three Hundred Seventy One Thousand and 00/100 U.S. Dollars (\$3,371,000) (the “**Purchase Price**”).
2. **INSPECTION.** By execution of this Offer, the Purchaser certifies that it has conducted all appropriate or necessary inspections of the Property. Failure of the Purchaser to inspect or to be fully informed as to the condition of all or any portion of the Property shall not constitute grounds for withdrawal of the Offer, rescission of any contract resulting from the Government’s acceptance of the Offer, or any claim or demand for adjustment of the Purchase Price. The Purchaser shall be deemed to have relied solely on its own judgment in assessing the condition of all or any portion of the Property.
3. **RIGHT OF POSSESSION.** Notwithstanding anything to the contrary contained in this Offer, the Government shall deliver the right of possession and use of the Property to Purchaser, including the right of Purchaser, its contractors, assignees and designees, to remove and dispose of improvements, and to respond to releases of hazardous substances, hazardous waste, and solid waste pursuant to the Gratuitous Services Agreement referenced and defined in Section 4, on the date Purchaser deposits into Escrow the full amount of the Purchase Price. The Purchase Price includes, but is not limited to, full payment for such possession and use, including damages, if any, between the date of possession and the Closing Date. Notice will be given by Purchaser to the Government that deposit into Escrow has occurred. Once Government receives notice and confirms that full purchase price has been deposited into Escrow then the Government will provide notice to purchaser that removal of improvements may commence.
4. **“AS-IS, WHERE IS” PROVISION (CONDITION OF PROPERTY).** Purchaser shall accept the Property on an “as is, where is” with all faults basis, without warranty, express or implied, with any and all latent and patent defects. Except as expressly set forth in this Offer, the Government disclaims any and all express or implied warranties including but not limited to warranties of title, zoning, habitability, merchantability, suitability, fitness for any purpose, or any other warranty whatsoever. The Government makes no representations or warranties concerning the title, zoning, development potential, character, condition, size, quantity, quality and state of repair of the Property. Except as expressly provided in this Offer, no

employee or agent of the Government is authorized to make any representation or warranty as to the quality or condition of the property; merchantability, suitability or fitness of the property for any use whatsoever, known or unknown to the Government; or compliance with any environmental protection, pollution or land use laws, rules, regulations, orders, or requirements including, but not limited to, those pertaining to the handling, generating, treating, storing, or disposing of any hazardous waste or substance. Unless expressly provided for in this Offer, the Government makes no agreement or promise to alter, improve, adapt or repair the Property. In no event shall the Government be responsible or liable for latent or patent defects or faults, if any, in the property or for remedying or repairing the same including, without limitation, defects related to asbestos or asbestos containing materials, lead, lead-based paint, underground storage tanks, mold, radon or hazardous or toxic materials, chemicals or waste, or for constructing or repairing any streets, utilities or other improvements shown on any plat of the property. The condition of the Property and any information relating thereto shall not constitute grounds for withdrawal of the Offer, rescission of any contract resulting from the Government's acceptance of the Offer, or any claim or demand for adjustment of the Purchase Price.

A. Notwithstanding this "as is, where is" provision, nothing in this provision shall be construed to modify or negate the Government's obligations pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or any other statutory obligations.

B. CERCLA 120(h)(3) Compliance.

- i. The parties acknowledge that some of the soil of the Property (Coast Guard's Parcels 2 and 3), and of Coast Guard's Parcels 1 and 4, is suspected to contain hazardous substances, or hazardous waste, or solid waste. Purchaser agrees to perform on behalf of the Coast Guard all actions necessary to meet CERCLA 120(h)(3) requirements for conveyance of the Property, along with the conveyance of Parcels 1 and 4, at no cost to the Coast Guard, as authorized pursuant to a Gratuitous Services Agreement between the parties attached hereto as **Exhibit B**.
- ii. As required by CERCLA, the Quitclaim Deed conveying the Property to Purchaser must provide the grantee (1) a notice of the type and quantity of hazardous substances known to have been stored for one year or more on the Property, or released or disposed of on the Property to the extent such information is available on the basis of a complete search of agency files; (2) a covenant warranting that (i) all remedial action necessary to protect human health and the environment has been taken before the date of conveyance, and (ii) the Government shall take any additional remedial action, response action or corrective action which are found to be necessary regarding hazardous substances located on the Property after the date of this conveyance.
- iii. Per Commandant policy stated at Section 4.6.2 of the Real Property Management Manual, COMDTINST M11011.11 (2012), notice of the type and quantity of hazardous substances known to have been stored or released on the Property shall be based on a Phase 1 Liability Assessment set forth in Chapter 4 of the "Civilian Federal Agency Task Force, Guide on Evaluating Environmental Liability for Property Transfers" or alternative protocols that satisfy the basic requirements of

a Phase 1, to include a review of existing records, visual survey of the site, appropriate interviews, and a report in any reasonable format sufficient to meet the information requirements in the Phase 1. Physical sampling is required if the contamination survey indicates that a disposal or a release of a CERCLA hazardous substance may have occurred, or if certain types of structures are located on the property that are associated with releases of lead or solvents.

- iv. The Coast Guard is legally responsible for attaining CERCLA 120(h)(3) compliance on all YBI parcels prior to conveyance of the Property and/or Parcels 1 and 4, and is the lead federal agency authorized to exercise the authority of CERCLA 104(a), as delegated by Presidential Executive Order 12580, Section 2(e), and as defined by the National Oil and Hazardous Substances Pollution Contingency Plan at 40 CFR 300.5. As such, Purchaser shall clear all correspondence, documents, studies, or reports through Coast Guard's CEU Oakland Environmental Branch prior to release to the California Department of Toxic Substances Control. CEU Oakland will provide clearance or make recommendations for changes as necessary to ensure applicable legal and Coast Guard requirements are met.
- v. If Purchaser is obligated to perform any additional hazardous substance, hazardous waste, or solid waste removal, remediation, or corrective action, following transfer of title, including but not limited to any demolition of existing structures or excavation of land to prepare for future improvements and uses, Purchaser understands and agrees that Purchaser shall be solely responsible for such actions and the costs thereof.

C. Special Provisions to License Agreement HSCG89-19-6-60003 shall be included as **Exhibit F** and all actions required shall be part of this Agreement.

D. The structures named "Quarters 8" and "Quarters 9" on the Property are currently not being used as housing by the Government, and have not been used as housing for at least five (5) years. Purchaser does not intend to use either structure as housing in the future.

5. ZONING. Verification of the present zoning and determination of permitted uses thereunder, along with compliance of the Property for present or proposed future uses, shall be the responsibility of the Purchaser and the Government makes no representation in regard thereto. The Government does not guarantee that any zoning information is necessarily accurate or will remain unchanged. Any inaccuracies or changes in the zoning information shall not constitute grounds for withdrawal of the Offer, rescission of any contract resulting from the Government's acceptance of the Offer, or any claim or demand for adjustment of the Purchase Price.

6. UTILITY SERVICES. Utility services typical for the location of the Property (such as water, sewer, electrical, gas, and telecommunications) are believed to be available to the Property. However, the Government does not guarantee that any particular utility service(s) which may be desired by the Purchaser are or will be available to the Property before, on, or after the Closing Date. The Purchaser shall contact any desired utility service provider(s) to determine the availability of service(s) to the Property. Purchaser shall be responsible for procurement of any and all utility services to the Property desired by the Purchaser as of the Closing Date. Notwithstanding the foregoing, the parties acknowledge and agree that Purchaser's obligation

to purchase the Property is conditioned on the parties establishing rights and responsibilities for sanitary sewer and storm drain systems, including, at minimum, a mutually agreed upon easement across Government's adjacent property to connect to sanitary sewer, and a mutually agreed upon easement allowing the storm drains to continue to run across Government's adjacent property (together, the "Easements"). The Easements shall be recorded as part of the close of escrow for this transaction, unless otherwise agreed in writing by the parties. The parties agree that the existing storm drain structure and improvements currently serving Quarters 9 are to be included as part of the "Property" purchased by the Purchaser. This includes the portions of the storm drain that branch onto Government adjacent property.

7. **TITLE EVIDENCE.** Any title evidence for the Property desired by the Purchaser shall be procured by the Purchaser at its sole cost and expense, and Purchaser shall cause Escrow Holder (as such term is defined herein) to provide a preliminary title report for the Property promptly after acceptance of this Offer by the Government. The Government shall cooperate with reasonable requests by the Purchaser to examine and inspect any relevant documents in the Government's possession relating to the title of the Property. The Government shall further cooperate with reasonable requests by Purchaser with respect to efforts to remove items from title that Purchaser and Government agree should be so removed, all at no expense to the Government. The Government shall not be obligated to pay for any expense incurred by the Purchaser in connection with title matters or any survey of the Property.
8. **PROPERTY TO BE CONVEYED BY DEED WITHOUT WARRANTIES.** Other than those identified in paragraph 4, subsection B, the Property shall be conveyed by quitclaim deed without warranties in conformity with local law and practice.
9. **PROPERTY TO BE CONVEYED SUBJECT TO COVENANTS, RESERVATIONS, EASEMENTS, & RESTRICTIONS.** The Property shall be conveyed subject to the notices, disclosures, covenants, reservations, easements, and restrictions described in **Exhibit A** (Quitclaim Deed), as well as any and all existing covenants, reservations, easements, restrictions, and rights, whether recorded or unrecorded (including for private and public roads, highways, streets, pipelines, railroads, utilities, waterlines, sewer mains and lines, drainage, power lines, and other rights-of-way).
10. **CLOSING DATE AND DELAYS.** The date of Conveyance (the "**Closing Date**") shall be the first federal business day that is thirty (30) days after the Government's notice of acceptance of this Offer, except as otherwise provided below.
  - A. Except as otherwise agreed by the parties in writing, the Closing Date shall occur no earlier than five (5) business days after the Purchaser and the Government execute and notarize an original (or separate counterpart originals) of the final Easements and deliver the same to Escrow Holder, or Purchaser waives this requirement.
  - B. Section 4 B. CERCLA cleanup must be completed prior to closing.
  - C. Purchaser may request to extend the Closing Date. The Government reserves the right to refuse, for any reason, Purchaser's request to extend the Closing Date. The Government may condition its consent to the Purchaser's request to extend the Closing Date upon such additional terms and conditions as the Government deems reasonably necessary.

11. TENDER OF PAYMENT AND DELIVERY OF INSTRUMENT OF CONVEYANCE. Upon acceptance of this Offer by the Government, Purchaser shall open an escrow account 0131-618431-020 with First American Title Company (“**Escrow Holder**”), an independent, unaffiliated escrow company, to handle the closing. All closing costs, including escrow fees and document handling expenses, shall be borne solely by the Purchaser. As part of the closing, the Government and Purchaser will provide escrow instructions to the Escrow Holder regarding recording, disposition of proceeds and related matters, as and when necessary.

A. Upon acceptance of this Offer by the Government, Escrow Holder is hereby appointed and instructed to deliver, pursuant to the terms of this Offer, the documents and funds to be deposited into escrow pursuant hereto.

Escrow Holder’s contact information is as follows:

Jules L. Fulop, Senior Escrow Officer  
First American Title Company  
Northern California Homebuilder Services  
4750 Willow Road, #100  
Pleasanton, CA 94588  
Direct: (925) 201-6606  
Fax: (800) 648-7806  
Email: JFulop@firstam.com

B. Upon Purchaser’s notification of the Government’s acceptance of the Offer, the Purchaser may request that the Government revise **Exhibit A** (Quitclaim Deed), provided that the Government shall be under no obligation to make any revision except as strictly required to carry out the terms and conditions set forth in this Offer. Thereafter, the Government shall execute one original deed, as may be revised, to convey the Property to the Purchaser.

C. On or before the Closing Date, Purchaser shall tender final payment of the balance of the Purchase Price in the form of a cashier’s check, certified check or electronic wire transfer to the Escrow Holder.

D. On or before the Closing Date, the Government shall deliver to the Escrow Holder the original deed executed by the Government.

E. Promptly after delivery by the Government of the original and fully-executed deed into escrow, Purchaser shall tender final payment of all escrow fees, the cost of the Title Policy (as such term is defined herein), and all recording costs and fees, and any portion of the Purchase Price not previously tendered, all in the form of a cashier’s check, certified check or electronic wire transfer to the Escrow Holder. Purchaser shall further acknowledge acceptance of the conveyance of the Property to the Purchaser (the “**Conveyance**”) by executing an appropriate Certificate of Acceptance pursuant to Government Code Section 27281 and delivering same to Escrow Holder.

F. Escrow Holder shall, when all required funds and instruments have been deposited into the escrow by the appropriate parties and when all other conditions have been fulfilled, cause the Quitclaim Deed and attendant Certificate of Acceptance to be recorded in the Office of the County Recorder of San Francisco. Upon the Closing, Escrow Holder shall deliver to Purchaser the original of the Title Policy, and to the Government, Escrow

Holder's check for the full Purchase Price of the Property, and to Purchaser or Government, as the case may be, all other documents or instruments which are to be delivered to them.

G. Escrow Holder may accept instructions regarding this transaction on behalf of Purchaser from the following individuals, or other individual(s) authorized by same:

Tilly Chang; Authority Executive Director  
Eric Cordoba; Authority Deputy Director for Capital Projects  
Cynthia Fong; Authority Deputy Director for Finance and Administration  
Neal Parish, Wendel, Rosen, Black & Dean LLP; Attorneys for Authority

12. **TAXES, ASSESSMENTS, AND OTHER COSTS.** The Purchaser shall pay all taxes, assessments, and other costs imposed on this transaction and shall obtain at its own expense and affix to all instruments of conveyance and security documents such transfer, revenue and documentary stamps as may be required by Federal and local law.
13. **RECORDING.** As specified in the escrow instructions, the Escrow Holder shall record the deed and any related instruments of conveyance in the manner prescribed by local recording statutes at the Purchaser's expense. The Escrow Holder shall provide the Government with a conformed copy of the recorded deed within five (5) business days of the Conveyance.
14. **LIABILITY FOR TAXES.** Upon the Conveyance of the Property, sums paid, or due to be paid by the Government in lieu of taxes pursuant to statutory authority, shall be prorated and the Purchaser shall assume responsibility for all general and special real and personal property taxes which may have been or may be assessed on the Property for the period after the Closing Date. The Government makes no representation regarding whether any past due taxes or past due payments in lieu of taxes are owed by the Government for the Property.
15. **CONTINUING OFFER.** This Offer shall be deemed a firm and continuing Offer from the date of receipt until accepted or rejected by the Government; provided, however, that after 60 days have elapsed from the date of Government's receipt of the Offer, the Purchaser may consider the Offer rejected if the Purchaser has not received actual notice of rejection; and further provided that the Government may accept the Offer after 60 days have elapsed from the date of Government's receipt of the Offer only with the consent of the Purchaser.
16. **NOTICE OF ACCEPTANCE OR REJECTION.** Actual notice by the Government of acceptance or rejection of the Offer shall be deemed to have been sufficiently given when received by a duly authorized representative of the Purchaser or three calendar days after the date the Government deposits such notice, postage-prepaid, with a common carrier addressed for delivery to the Purchaser at:

Purchaser: San Francisco County Transportation Authority  
1455 Market Street, 22nd Floor  
San Francisco, CA 94103  
Attn: Cynthia Fong  
Deputy Director for Finance and Administration

With copies to: San Francisco County Transportation Authority  
1455 Market Street, 22nd Floor  
San Francisco, CA 94103

Attn: Eric Cordoba  
Deputy Director for Capital Projects

Neal A. Parish  
Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607

17. **AGREEMENT UPON ACCEPTANCE OF OFFER.** The Government’s acceptance of this Offer shall constitute a contractual agreement between the Purchaser and the Government, effective as of the date of notice of acceptance to the Purchaser (the “**Agreement**”). The Agreement shall constitute the whole contract to be succeeded only by the formal instruments of transfer, unless modified in writing and signed by both parties. No oral statements or representations made by, or for, or on behalf of either party shall be a part of such contract. Nor shall the Agreement or any interest therein, be transferred or assigned by the Purchaser without the consent of the Government, and any assignment transaction without such consent shall be void.
18. **RESCISSION OF ACCEPTANCE.** The Government, in its sole discretion, may rescind its acceptance of the Offer and the resulting Agreement prior to the Conveyance for any reason (including military conflict, national emergency, evidence of material misrepresentation or other wrongful conduct by the Purchaser, or other cause). Any rescission will be without any liability on the part of the Government other than to return to the Purchaser all amounts paid by Purchaser, without interest. The Government’s right to rescind the acceptance of Purchaser’s Offer shall terminate upon conveyance of the Property.
19. **REVOCAION OF OFFER AFTER ACCEPTANCE OR DEFAULT BY PURCHASER.** In the event of the Purchaser’s revocation of the Offer after acceptance, or in the event of any default by the Purchaser in the performance of the contract created by such acceptance, at the sole option of the Government, either (a) the Purchaser shall forfeit to the Government all amounts paid by Purchaser including the Deposit and any other payments relating to the Property, in which event the Purchaser shall be relieved of further liability or (b) the Government may avail itself of any legal or equitable rights which it may have, including by law or under the Offer or Agreement.
20. **GOVERNMENT LIABILITY.** If this Offer to Purchase is accepted and the Government fails for any reason to perform its obligations as set forth herein and the Government returns to the Purchaser all amounts paid by Purchaser, without interest, then the Government shall have no further liability to the Purchaser.
21. **COVENANT AGAINST CONTINGENT FEES.** The Purchaser warrants that it has not employed or retained any person or agency to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to terminate the contract without liability or, in its sole discretion, to recover from the Purchaser the amount of such commission, percentage, brokerage or contingent fee in addition to the Purchase Price and other consideration herein set forth. This warranty shall not apply to any commission payable by the Purchaser upon the contract secured or made through bona fide established commercial agencies maintained by the Purchaser for the purpose of doing business. “Bona

vide established commercial agencies” may be construed to include licensed real estate brokers engaged in the business generally.

22. OFFICIALS NOT TO BENEFIT. No member of or delegate to the Congress or resident commissioner shall be admitted to any share or part of this Offer or to any benefit that may arise from it, but this provision shall not be construed to apply if made with a business organization for its general benefit.
23. CONDITION PRECEDENT TO PURCHASER’S OBLIGATION TO CLOSE. The Purchaser’s obligation to purchase the Property from the Government is expressly conditioned upon Escrow Holder’s issuance, or agreement to issue, an owner’s policy of title insurance to Purchaser in the amount of the Purchase Price (“**Title Policy**”) upon the Closing, at Purchaser’s expense.
24. GOVERNMENT PERSONAL PROPERTY. The Personal Property of the Government shall remain the property of the Government and shall not be conveyed to the Purchaser unless the Government, in its sole and absolute discretion, elects to release its interest in such Government Retained Personal Property to the Purchaser.
25. EXHIBITS. The following Exhibits are incorporated herein: **Exhibit A** (Quitclaim Deed) and **Exhibit B** (Form of Gratuitous Services Agreement), **Exhibit C** (SHPO, Caltrans, and USCG MOA), **Exhibit D** (First Amendment to Exhibit C), **Exhibit E** (National Historic Preservation Covenant for Quarters 9), **Exhibit F** (Special Provisions to License Agreement HSCG89-19-6-60003).
26. As a point of reference to clarify the intent of the parties, this Offer represents Project A of Purchaser’s Roadmap Letter to the Government dated August 28, 2018. A copy is included as **Exhibit G**.

*[signatures on following pages]*

**AUTHORITY OF PURCHASER**

In Witness of, the San Francisco County Transportation Authority has caused this Offer to be executed and delivered to the United States of America this \_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE BY THE UNITED STATES GOVERNMENT**

The Offer to Purchase, as set forth hereinabove, is hereby accepted on behalf of the United States of America this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE OF CALIFORNIA**

**COUNTY OF \_\_\_\_\_**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before the undersigned, a Notary Public in the and for the State of California, personally appeared, \_\_\_\_\_ to me known to be the \_\_\_\_\_, and to me known to be the individual described in and who executed the foregoing instrument and who under oath stated that he was duly authorized, empowered, and delegated by the Commandant of the U.S. Coast Guard to execute the said instrument, and acknowledged the foregoing instrument to be his free and voluntary act and deed, acting for and through the Commandant of the U.S. Coast Guard, acting for and on behalf of the United States of America, for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of California

Commission expires: \_\_\_\_\_

## Attachment 2: Gratuitous Service Agreement

### EXHIBIT "B-1"

#### GRATUITOUS SERVICES AGREEMENT

**THIS GRATUITOUS SERVICES AGREEMENT** is between the **UNITED STATES COAST GUARD** ("RECIPIENT") and **SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY** ("PROVIDER").

1. The duration of this gratuitous services agreement is from June 1, 2019 to June 1, 2024. This duration of this agreement cannot be extended except by the express, written, mutual consent of both parties. However, both parties can mutually consent to early termination of this agreement. Additionally, this agreement can be unilaterally terminated by either party, with or without cause, with or without prior notification to the other party, in writing or verbally. Both parties are prohibited from claiming or seeking damages from the other party or from the United States because of any mutual or unilateral early termination of this agreement.

2. The terms of this agreement cannot be modified except by the express, written, mutual consent of both parties.

3. PROVIDER offers to provide the following gratuitous services to RECIPIENT:

Remove lead-contaminated material identified within Parcels 2 and 3 (USCG Quarters 8 and 9 respectively) and at sampling site S21 all as noted within the Site Investigation Report for the Southgate Road Realignment Project, prepared by Geocon Consultants, Inc. and dated December 2018, including providing clean backfill and surface restoration on Parcel 3 and at sampling site S21.

4. RECIPIENT agrees to accept PROVIDER'S gratuitous services identified in **Paragraph 3** above to the extent permitted by law.

5. PROVIDER agrees to provide the gratuitous services described in **Paragraph 3** above with the full understanding that RECIPIENT and the United States will not compensate, provide any financial benefit to, or reimburse PROVIDER in any manner for providing those services.

6. PROVIDER agrees and declares that he/she has no expectation of receiving any compensation, financial benefit, or reimbursement of any kind from RECIPIENT or the United States for providing gratuitous services under this agreement.

7. PROVIDER agrees to make no claim for compensation, financial benefit, or reimbursement of any kind against RECIPIENT or the United States for gratuitous services provided under this agreement.

8. PROVIDER understands and agrees that it would be unlawful for RECIPIENT to accept PROVIDER services if PROVIDER had any expectation of any compensation, financial benefit, or reimbursement from RECIPIENT or the United States.

9. Both parties understand and agree that PROVIDER does not become a RECIPIENT employee or United States employee for any purpose under this agreement.

10. RECIPIENT declares that it will not replace or displace any federal employee because of this agreement.

11. RECIPIENT declares that it is not using this agreement in lieu of hiring a federal employee or contractor to perform the services described in Paragraph 4 above.

12. Both parties declare that this document constitutes the sole and complete gratuitous services agreement between them.

**RECIPIENT:**

**UNITED STATES COAST GUARD**

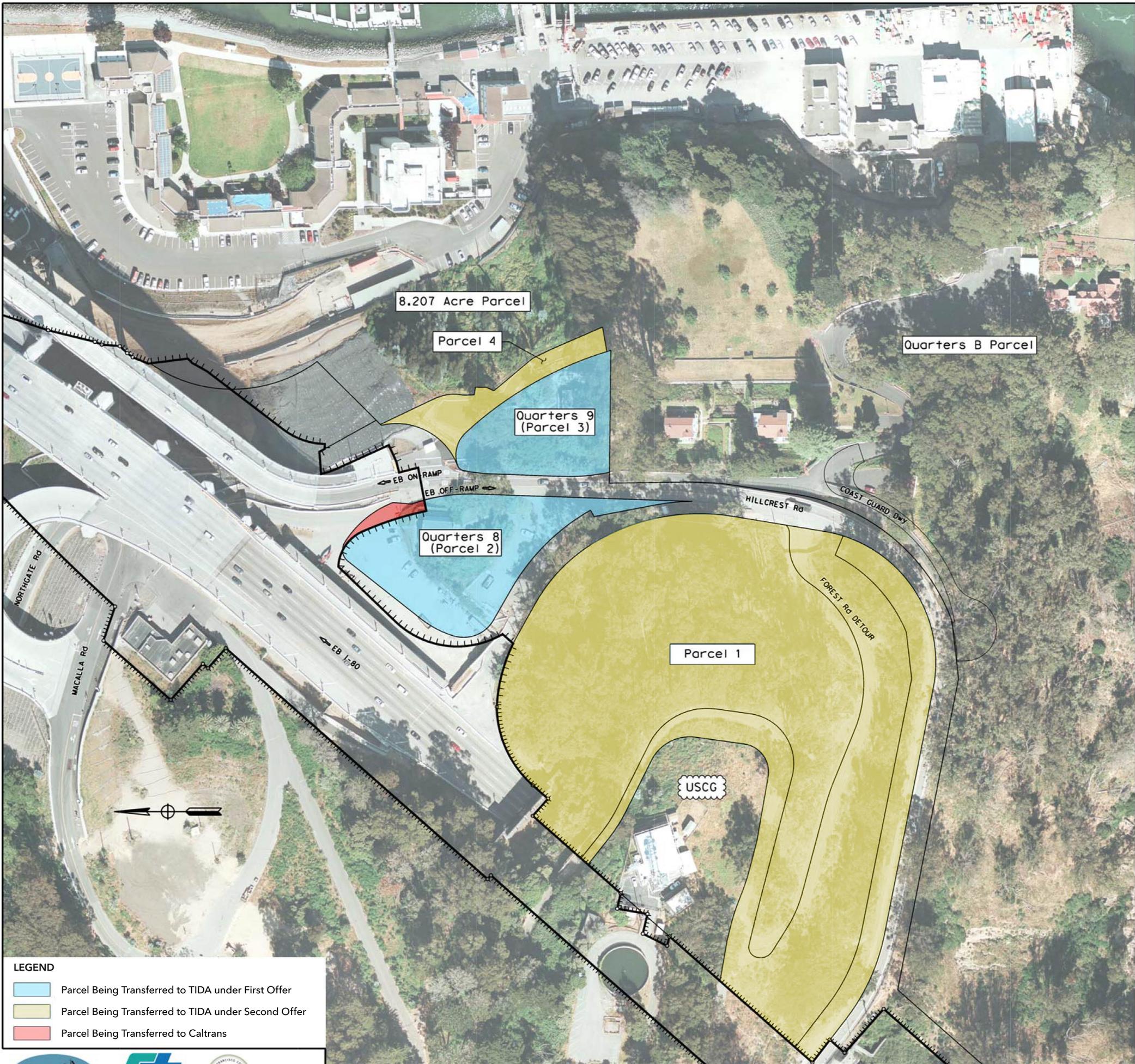
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**RECIPIENT**

**SAN FRANCISCO COUNTY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attachment 3: Map of Parcels



**LEGEND**

- Parcel Being Transferred to TIDA under First Offer
- Parcel Being Transferred to TIDA under Second Offer
- Parcel Being Transferred to Caltrans



**EXHIBIT A**  
APRIL 2019

YERBA BUENA ISLAND  
PROJECTS

**PROPOSED  
RIGHT OF WAY  
REQUIREMENTS**





# Memorandum

**Date:** May 13, 2019  
**To:** Transportation Authority Board  
**From:** Eric Cordoba – Deputy Director for Capital Projects  
**Subject:** 05/21/19 Board Meeting: Authorize the Executive Director to Execute Agreements and Documents Required for Utilities and Right-of-Way Property Acquisition for the Yerba Buena Island Southgate Road Realignment Improvements Project, Including Offers to Purchase for an Aggregate Amount Not to Exceed \$5,534,760 and a Gratuitous Services Agreement, all with the United States Coast Guard, and Utility Agreements with Various Providers in an Amount Not to Exceed \$750,000, and to Execute all Agreements, Documents and Deeds Required to Transfer the Acquired Right-of-Way to the California Department of Transportation and the Treasure Island Development Authority

<p><b>RECOMMENDATION</b>   <input type="checkbox"/> Information   <input checked="" type="checkbox"/> Action</p> <ul style="list-style-type: none"> <li>• Authorize the Executive Director to execute the following agreements and documents required for utilities and right-of-way property acquisition and transfers for the construction phase of the Yerba Buena Island (YBI) Southgate Road Realignment Improvements Project:             <ul style="list-style-type: none"> <li>○ Offers to Purchase and a Gratuitous Services Agreement with the United States (U.S.) Coast Guard</li> <li>○ All agreements, documents and deeds required to transfer the acquired right-of-way to the California Department of Transportation (Caltrans) and the Treasure Island Development Authority (TIDA)</li> <li>○ Utility agreements for gas, electrical, cables, and tolling system fiber with Pacific Gas &amp; Electric Company, AT&amp;T, Comcast, and any necessary City and County of San Francisco departments</li> </ul> </li> <li>• Authorize the Executive Director to negotiate agreement payment terms and non-material terms and conditions</li> </ul> <p><b>SUMMARY</b></p> <p>The requested action is a supplement to the action taken by the Board in March to advance the YBI Southgate Road Realignment Improvements Project (Project) to the construction phase. On behalf of TIDA, the Transportation Authority will be acquiring property on YBI from the U.S. Coast Guard to enable construction of the Project according to the current schedule and for continued use of Vista Point. The Transportation Authority will subsequently be transferring the majority</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Fund Allocation</li> <li><input type="checkbox"/> Fund Programming</li> <li><input type="checkbox"/> Policy/Legislation</li> <li><input type="checkbox"/> Plan/Study</li> <li><input checked="" type="checkbox"/> Capital Project Oversight/Delivery</li> <li><input type="checkbox"/> Budget/Finance</li> <li><input checked="" type="checkbox"/> Contract/Agreement</li> <li><input type="checkbox"/> Other: _____</li> </ul>
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<p>of the property to TIDA as soon as practicable and the remainder to Caltrans after construction is complete. In addition, several utility agreements will need to be entered into with various providers in order to accommodate future TIDA redevelopment plans and tolling systems efforts.</p>	
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**DISCUSSION**

**Background.**

At its March 19, 2019 meeting, the Board gave final approval for the Executive Director to execute various agreements for the Project, including license agreements with the U.S. Coast Guard and amendments to the right-of-way and construction Memorandums of Agreements (MOAs) with TIDA. The amendment to the right-of-way MOA included an amount not to exceed \$5,534,760 for right-of-way property acquisition. TIDA has now requested that the Transportation Authority, rather than TIDA as originally anticipated, purchase the property from the U.S. Coast Guard, in lieu of TIDA purchasing the property directly, so that construction activities may continue as currently scheduled and for continued use of Vista Point. As described further below, the Transportation Authority will subsequently be transferring the majority of the property to TIDA as soon as practicable and the remainder to Caltrans after construction is complete.

**Agreements.**

Following the agreements approved by the Board in March, there are now additional agreements required for utilities and to acquire right-of-way and prepare the Project for construction as discussed below. TIDA has requested that the Transportation Authority take these actions to satisfy right-of-way certification conditions prior to issuing an invitation to bid for construction, currently planned for July. We anticipate bringing the construction contract award to the Board for approval in October 2019, with construction activities starting in November 2019.

Offers to Purchase: Pursuant to TIDA’s request, the Transportation Authority will act on behalf of TIDA to acquire real property interests from the U.S. Coast Guard for the Project right-of-way as shown in the Attachment 3 map. At this point, there are two Offers to Purchase anticipated to be executed, for a total amount not to exceed \$5,534,760. The first Offer to Purchase will be for the acquisition of U.S. Coast Guard property Quarters 8 and 9, and the form of this initial Offer is attached hereto as Attachment 1. The title to the property will not transfer to the Transportation Authority until the lead contaminated soil is removed per the Gratuitous Services Agreement discussed below, and a No Further Action Letter (NFA) is obtained by the U.S. Coast Guard from the Department of Toxic Substance Control (or NFA equivalent is provided by U.S. Coast Guard), currently anticipated as a six to nine month process. The Transportation Authority and the U.S. Coast Guard will execute the second Offer to Purchase, which will be substantially in the same form as the initial Offer to Purchase (Attachment 1), once the additional property covered by that Offer is placed on the U.S. Coast Guard’s divestiture list. The right-of-way acquisition will be funded with TIDA, Bay Area Toll Authority (BATA), state and federal funds.

All obligations assumed by the Transportation Authority under the Offers to Purchase are deemed to be Transportation Authority Right-of-Way Costs, subject to TIDA’s reimbursement obligation pursuant to the existing Memorandum of Agreement (MOA) with TIDA for the right-of-way phase of the Project.

Agenda Item 8

Gratuitous Services Agreement: This agreement allows for removal of lead contaminated soil identified on U.S. Coast Guard property that will be acquired for the Project. This work will be completed as part of the construction of the Project on U.S. Coast Guard property, while right-of-way acquisition is being completed. The proposed agreement is attached hereto as Attachment 2.

Right-of-Way Transfer: The Transportation Authority will acquire the real property interests needed for the Project. Once the Transportation Authority acquires the property, the majority of the property will be transferred to TIDA as soon as practicable and the remaining portion will be transferred to Caltrans after construction is complete. The requested action also authorizes the Executive Director to sign the deeds and related documents to permit the transfer of property to TIDA and Caltrans.

Utility Agreements: Several utility agreements will need to be entered into with various providers in order to accommodate future TIDA redevelopment plans and tolling systems efforts. These agreements are for utilities to be installed within and through the Project limits and include the following: Pacific Gas & Electric (gas), AT&T (cables), Comcast (cables), San Francisco Public Utilities Commission (electrical), the City’s Department of Technology (tolling system fiber), and could include additional City departments. These utility agreements are still being developed and will be very similar to the utility agreements approved through Resolution 13-41 for the YBI Ramps Improvement Project. The total cost for these agreements is estimated at \$750,000 and is included in the Project budget of \$51,030,807.

TIDA shall indemnify the Transportation Authority and assume all liabilities incurred from entering into the agreements executed as a result of this item.

**Funding.**

There are no changes to the funding plan since it was last presented to the Board in March, as shown in the table below. The property acquisition is contingent upon the authorization of federal, state and regional grant funds, currently expected in June 2019.

<b>YBI Southgate Road Realignment Improvements Project</b>							
<b>Overall Funding Plan</b>							
<b>PHASE</b>	<b>FEDERAL HIGHWAY BRIDGE PROGRAM</b>	<b>STATE PROP 1B</b>	<b>BATA</b>	<b>TIDA</b>	<b>FUTURE BATA</b>	<b>FUTURE FEDERAL HIGHWAY BRIDGE PROGRAM<sup>1</sup></b>	<b>TOTAL</b>
Preliminary Engineering	\$ -	\$ -	\$ 6,819,315	\$ -	\$ 673,967	\$ -	\$ 7,493,282
Right-of-way	\$ 885,300	\$ 114,700	\$ -	\$ 500,000	\$ 20,137	\$ 4,014,623	\$ 5,534,760
Construction	\$ 26,861,019	\$2,148,445	\$ 4,431,685	\$ -	\$ 523,217	\$ 4,038,399	\$ 38,002,765
<b>TOTAL</b>	<b>\$ 27,746,319</b>	<b>\$2,263,145</b>	<b>\$ 11,251,000</b>	<b>\$ 500,000</b>	<b>\$1,217,321</b>	<b>\$ 8,053,022</b>	<b>\$ 51,030,807</b>

**Schedule.**

The Project schedule is projected as follows:

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<sup>1</sup> Future federal Highway Bridge Program funds are subject to change based on funding partners fair share split negotiation.

## Agenda Item 8

- Execute Caltrans Cooperative Agreement, U.S. Coast Guard Agreements (Offers to Purchase and Gratuitous Services Agreement), Utility Agreements, and Right-of-Way Certification – June 2019
- Request Construction Phase Funding – June 2019
- Obtain Construction Phase Funding Allocation Approval – July 2019
- Advertise Construction Contract – July 2019
- Award Construction Contract – October 2019
- Begin Construction – November 2019
- Open to Traffic – Spring 2021

### **FINANCIAL IMPACT**

The right-of-way acquisitions and utility agreements are included in the Transportation Authority's Fiscal Year 2018/19 mid-year budget amendment and will be funded with federal Highway Bridge Program, state Prop 1B, BATA and/or TIDA funds specifically designated for the Project, as shown above.

### **CAC POSITION**

The CAC was briefed on this item at its April 24, 2019 meeting and adopted a motion of support for the staff recommendation. Following the CAC's approval, we revised the memo to also authorize the Executive Director to execute utility agreements with various providers in an amount not to exceed \$750,000.

### **SUPPLEMENTAL MATERIALS**

Attachment 1 – First Offer to Purchase for Quarters 8 and 9

Attachment 2 – Gratuitous Services Agreement

Attachment 3 – Map of Parcels