

PUBLIC-PRIVATE PARTNERSHIP
COOPERATIVE AGREEMENT

THIS AGREEMENT, EFFECTIVE AS OF January 1st, 2010, is made by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY, a public corporation, referred to herein as "AUTHORITY."

RECITALS

1. STATE and AUTHORITY, collectively referred to as "PARTNERS", pursuant to Streets and Highways Code sections 114, 130 and 143, are authorized to enter into a Cooperative Agreement (AGREEMENT) for improvements to the State Highway System (SHS) within the City and County of San Francisco.
2. The Presidio Parkway Project includes the design, construction and financing of Phase II (as defined below), and the operation and maintenance of Phase I (as defined below) and Phase II of the project (PROJECT). The Presidio Parkway Project is the successor to the Doyle Drive Replacement Project, which is to reconstruct 1.6 miles of existing route 101 with a new six-lane facility south of the Golden Gate Bridge in San Francisco. The PROJECT was split into two major construction phases.
 - **Phase I** consists of contracts 1 through 4. It will ensure that seismic safety is achieved as soon as possible. At the completion of Phase I, all traffic will be on either new structures or detour roads that meet seismic standards. Phase I started construction in November 2009 and is estimated to cost approximately \$450 million.

Contract	Project Description
Contract 1	Advanced Environmental Mitigation – (wet land creation, biological mitigation, tree removal, plant material collection and propagation). Mitigation prior to construction activities. Building stabilization prior to construction activities. Grading and contractor access. Geotechnical Demonstration - Cement Deep Soil Mixing (CDSM), for tunnel construction and pile indicators. Environmental mitigation during construction is accounted for in the individual contract budgets.
Contract 2	Utility relocation prior to construction activity, including water, electric, sewer and telecommunications, and including private utility relocation for items owned by the Presidio. (Public utility relocations included in the Right of Way (ROW) data sheet).
Contract 3	Ruckman, Southern Park Presidio Interchange (PPI), South Bound (SB) High Viaduct, including the southbound portion of the Presidio Interchange.
Contract 4	South Bound (SB) Battery Tunnel, at grade detour, retaining wall # 6 and 8, permanent roadway sections, long weekend closure, partial demolition of low viaduct structures & open at-grade detour to public traffic.

- **Phase II** consists of contracts 5 through 8, with an estimated cost of approximately \$473 million. As planned, Phase II would start in 2011 and be completed by 2013.

Contract	Description
Contract 5	Main Post Tunnels, Northbound Battery Tunnel, Electrical and Mechanical Substation, Traffic Switch (full weekend closure)
Contract 6	Girard Road Undercrossing, Low Viaduct
Contract 7	Northbound High Viaduct, Northern Park Presidio Interchange, Northbound Roadway to Merchant Road, Demolish Existing High Viaduct
Contract 8	Landscaping

3. PARTNERS each desire to develop, construct, and maintain the PROJECT utilizing the public-private partnership ("P3") provisions and processes set forth in Streets and Highway section 143.
4. The PARTNERS have entered into previous Cooperative Agreements as follows: Cooperative Agreement No. 4-2106, on December 31, 2007 (extended the termination date from January 1, 2008 to January 1, 2013); Cooperative Agreement, District Agreement No. 4-2258, on May 4, 2009; Cooperative Agreement, District Agreement No. 4-2129, on May 5, 2009; Cooperative Agreement, District Agreement No. 4-2291, on June 30, 2009
5. PARTNERS hereto have for the purpose of the PROJECT entered into the following Cooperative Agreements that have been identified by District Agreement Numbers (DAN): DAN- 4-2106 for PA&ED which was subsequently amended; DAN- 4-2129 for PS&E; DAN-4-2258 for Right of way; and DAN- 4-2291 for construction phase of the PROJECT. In case of any conflict between the terms in those agreements and this AGREEMENT, the terms of this AGREEMENT shall prevail.
6. It is the intent of the PARTNERS under this AGREEMENT to create a relationship and establish the framework to analyze more optimal methods for financing, delivering, and implementing the PROJECT, including an assessment of a public-private partnership as an alternative to conventional project delivery and to lay the foundation for working together if a public-private partnership is determined to be the preferred delivery method.
7. The PARTNERS intend on entering into this AGREEMENT to establish certain opportunities for cooperation and coordination and to set forth various responsibilities of the PARTNERS, all as further set forth herein.
8. Each PARTNER intends to avail itself of the resources of the other in accomplishing the work under this AGREEMENT.
9. The PARTNERS have jointly decided under this AGREEMENT to pursue the PROJECT as a design-build-finance-operate-maintain (DBFOM) public-private partnership.
10. The PARTNERS each desire to enter this AGREEMENT relating to the design, build, finance, operate, and maintenance phases of the PROJECT, including the work related to the preparation and submission of a Project Proposal Report (PPR) to the California

Transportation Commission (CTC), through the financial close of the PROJECT and until reversion of the PROJECT assets to the STATE (the "P3 PROCESS").

NOW, THEREFORE, in consideration of the foregoing recitals, and the following terms, covenants, and conditions, the PARTNERS each agree as follows:

ARTICLE I DEFINITIONS

DEVELOPER – is the entity that submitted the best value proposal to the STATE as determined by the PARTNERS.

FEDERAL STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at <http://www.fhwa.dot.gov/programs.html>.

FUNDING PARTNER – A PARTNER who commits a defined dollar amount set forth in the FUNDING SUMMARY.

FUNDING SUMMARY - The exhibit in which PARTNERS designate funding sources, types of funds, and the project expenses for which the funds are to be spent. Funds listed on the FUNDING SUMMARY are "not-to-exceed" amounts for each FUNDING PARTNER.

IMPLEMENTING AGENCY – The PARTNER responsible for managing the scope, cost, and schedule of the PROJECT to ensure the completion of the PROJECT.

PARTNERS – The term that collectively references all of the signatory agencies to this AGREEMENT. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one partner's individual actions legally bind the other partners.

SHS – State Highway System.

SPONSOR(S) – The PARTNER that accepts the obligation to secure financial resources to fully fund the PROJECT. This obligation includes securing any additional funds beyond those committed in this AGREEMENT that are necessary to complete the full scope of the PROJECT or to settle claims.

STATE STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital PROJECT Delivery Workplan Standards* available at <http://www.dot.ca.gov/hq/projmgmt/guidance.htm>

ARTICLE II JOINT ROLES AND RESPONSIBILITIES

The PARTNERS shall have the following joint roles and responsibilities:

1. The roles and responsibilities that are assigned to a PARTNER include those roles and responsibilities that are carried out by that PARTNER's staff members and consultants, advisors and contractors.

2. The PARTNERS will jointly appoint a management team to manage the PROJECT and the P3 PROCESS, and the management team shall include executives, staff and consultants of each PARTNER. Notwithstanding the foregoing, the STATE possesses sovereign powers and statutory authorities which it can exercise judiciously and independently to manage, operate and control the PROJECT.
3. PARTNERS will consult with each other on any decision or action that would materially affect the PROJECT or P3 PROCESS.
4. PARTNERS will cooperate to fund the PROJECT from sources and in the amounts identified in the FUNDING SUMMARY, which is attached as "Exhibit A" and incorporated into the Agreement by reference.
5. PARTNERS will provide the PROJECT-specific consultant support including engineering, finance, legal and related services. Notwithstanding the foregoing, the PARTNERS acknowledge that the STATE is responsible for providing "project development services" as described in Streets and Highways section 143(f)(1), subject to the AUTHORITY's right to provide input with regard to the provisions of those services as provided in Article IV hereof and the right of the STATE to use the AUTHORITY's consultants to carry out such services as provided herein.
6. PARTNERS will select the DEVELOPER of the PROJECT.
7. PARTNERS are FUNDING PARTNERS for this Agreement. The PARTNERS' respective funding commitments are set forth in the FUNDING SUMMARY. PARTNERS acknowledge that amounts identified within the FUNDING SUMMARY are estimates of funds available and that actual amounts of funds available may be higher or lower than estimated amounts due to actual costs of contracts 1 through 4, variances in actual amounts received from other agencies contributing funds, and variances in receipt of sales tax payments by the AUTHORITY. Should PARTNERS determine that the PROJECT costs will exceed amounts identified within the FUNDING SUMMARY, PARTNERS accept equal obligation to secure any additional funds, beyond those committed in this Agreement, necessary to complete the PROJECT.
8. PARTNERS together will develop in writing a dispute resolution process. PARTNERS agree to be bound by that dispute resolution process. The dispute resolution process shall become a part of this AGREEMENT.

ARTICLE III
STATE ROLES AND RESPONSIBILITIES

The STATE shall have the following roles and responsibilities:

1. STATE is the Sponsor of the PROJECT.
2. STATE is the IMPLEMENTING AGENCY for the PROJECT.
3. STATE will work with the AUTHORITY to manage the PROJECT and the P3 PROCESS and implement the PROJECT and P3 PROCESS work in cooperation with the AUTHORITY.
4. STATE will be the responsible agency and will work with the AUTHORITY to develop and implement the technical specifications and procurement procedures that will be utilized by the PARTNERS and the DEVELOPER, including, working with the AUTHORITY to request specific work and/or issue task orders directly to the

- AUTHORITY's consultants; and, as requested by the STATE, the AUTHORITY's consultants will deliver their work directly to the STATE with notice and copies of the work to the AUTHORITY.
5. STATE will work with the AUTHORITY to develop and implement the PROJECT and P3 PROCESS performance and other specifications.
 6. STATE will be the lead responsible PARTNER for procuring legal and financial advice provided and utilized to support the P3 PROCESS.
 7. STATE will develop systematic and transparent processes for evaluating and implementing the PROJECT and P3 PROCESS work, and the PARTNERS shall perform their duties in accordance with these processes.
 8. STATE will develop and prepare Requests for Qualifications (RFQ), Requests for Proposals (RFP), Addenda to RFPs, DEVELOPER agreements, and supporting documents, and amendments related to the foregoing, and will obtain concurrence from the AUTHORITY (which concurrence will not be unreasonably withheld).
 9. STATE will provide regulations, policies, procedures, manuals, standard plans and specifications, and other standards required to perform the work contemplated by this AGREEMENT and the AUTHORITY will provide such assistance as is reasonably requested by the STATE.
 10. STATE will work with the DEVELOPER of the PROJECT to have the DEVELOPER prepare final design documents and drawings of civil, structural, mechanical, electrical, architectural, landscaping or other engineering features of the PROJECT. These documents will be prepared by or under the direction of engineers or architects registered and licensed in the applicable professional field in the State of California. Where appropriate, the engineering reports, plans, and the specifications for the PROJECT, shall bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the professional engineer, architect or landscape architect, who is responsible for their preparation. All work prepared by the DEVELOPER shall comply with requirements identified within the PROJECT environmental documents and agreements.
 11. STATE will develop the selection methodologies and criteria that the PARTNERS will use to select the DEVELOPER of the PROJECT and obtain concurrence from the AUTHORITY (which concurrence will not be unreasonably withheld).
 12. STATE will develop, implement, and utilize the P3 procurement processes in cooperation with the AUTHORITY.
 13. STATE will draft and negotiate agreements with the DEVELOPER of the PROJECT and incorporate provisions that promote the use of small, disadvantaged businesses and local San Francisco businesses to the extent permissible under applicable federal and state laws.
 14. STATE will cooperate with the AUTHORITY and with the City and County of San Francisco agencies that possess valid jurisdiction to develop and implement programs designed to promote the use of small, disadvantaged businesses and local San Francisco businesses and workforce development.
 15. STATE will be a signatory to the agreement with the DEVELOPER of the PROJECT and to all supporting or related agreements.
 16. STATE will retain the books, documents, papers, accounting records and other documents pertaining to the PARTNERS' duties and responsibilities under the

PROJECT and will make such materials available at all reasonable times to the AUTHORITY during the term of the PROJECT.

ARTICLE IV
AUTHORITY ROLES AND RESPONSIBILITIES

The AUTHORITY shall have the following roles and responsibilities:

1. AUTHORITY will work with the STATE to prepare the business case report that analyzes the PROJECT delivery options.
2. AUTHORITY will work with the STATE to provide technical advice and support that is provided and utilized in order to support the P3 procurement process including the development of technical specifications.
3. AUTHORITY will provide financial analyses support and perform the necessary financial modeling activities as requested by the STATE.
4. AUTHORITY will work with the STATE to conduct market studies (as and when requested by the STATE) that are consistent with the P3 procurement process.
5. AUTHORITY will work with the STATE to provide coordination, liaison, briefings, workshops and other outreach efforts for other agencies and the public.
6. In accordance with submissions made by the STATE to the AUTHORITY, the AUTHORITY will review, concur, and provide assistance with the development and use of procurement processes, selection methodologies, and selection criteria relating to the selection of the DEVELOPER of the PROJECT.
7. AUTHORITY will cooperate with the STATE to develop a PROJECT Management Plan that is consistent with international standards of practice and avoids provisions that would adversely limit the DEVELOPER's responsibilities or liabilities to the STATE or the AUTHORITY.
8. AUTHORITY will review and provide input on negotiations with prospective DEVELOPERS.
9. AUTHORITY will retain the books, documents, papers, accounting records and other documents pertaining to the AUTHORITY's duties and responsibilities under the PROJECT and will make such materials available at all reasonable times to the STATE during the term of the PROJECT. The STATE and any duly authorized representative of the Federal government will have access to the books, records, and documents of the AUTHORITY that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

ARTICLE V
STATE FUNDING ROLES AND RESPONSIBILITIES

The STATE shall have the following financial roles and responsibilities:

1. STATE will contribute funds to the PROJECT as shown in the FUNDING SUMMARY.

2. STATE will process all Federal authorizations, STATE allocations, and/or STATE application of funds on behalf of the AUTHORITY as applicable under Federal and STATE laws for the contribution of the STATE and Federal Funds to the PROJECT.
3. STATE will make milestone payments and availability payments to the DEVELOPER when due.
4. STATE will receive funds and contributions from the AUTHORITY as shown in the FUNDING SUMMARY.

**ARTICLE VI
AUTHORITY FUNDING ROLES AND RESPONSIBILITIES**

The AUTHORITY shall have the following financial roles and responsibilities:

1. AUTHORITY will contribute funds to the PROJECT as shown in the FUNDING SUMMARY.
2. AUTHORITY will arrange for and serve as aggregator of all local funds as shown in the FUNDING SUMMARY.
3. AUTHORITY is tasked by the STATE to apply for TIFIA funding and seek PAB approvals for the PROJECT.
4. AUTHORITY will work with the STATE to manage staple financing, if any.

**ARTICLE VII
GENERAL PROVISIONS**

The PARTNERS agree to the following General Provisions:

1. The terms of this AGREEMENT supersede, to the extent of any conflict, all prior agreements between the STATE and the AUTHORITY relating to the PROJECT.
2. All obligations of the STATE and the AUTHORITY 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 CTC as to the STATE and by the AUTHORITY's Board of Commissioners as to the AUTHORITY. The CTC will have exclusive jurisdiction relating to selection of the PROJECT pursuant to Streets and Highway section 143.
3. Signed and itemized invoices shall be submitted on a monthly basis to the STATE, in triplicate, with specific details of all costs incurred during the period of the invoice. Invoices will meet format and content requirements specified by the STATE. Each invoice shall be submitted to the STATE's project manager for approval and forwarding to the appropriate Accounting Office for payment.
4. Neither the STATE nor any officer or employer thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the AUTHORITY under or in connection with any work, authority or jurisdiction conferred upon the AUTHORITY under this AGREEMENT. It is understood and agreed that, the AUTHORITY will fully defend, indemnify, and save harmless the STATE and all its officers and employees from all claims, suits, or actions of every name, kind and

- description brought forth under, including but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted by the AUTHORITY under this AGREEMENT.
5. Neither the AUTHORITY nor any officer or employer thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by the STATE under or in connection with any work, authority or jurisdiction conferred upon the STATE under this AGREEMENT. It is understood and agreed that, the STATE will fully defend, indemnify, and save harmless the 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, or other theories or assertions of liability occurring by reason of anything done or omitted by the STATE under this AGREEMENT.
 6. STATE shall designate a PROJECT Manager to represent the STATE and the AUTHORITY shall designate a representative through whom all communications between the two agencies shall be channeled.
 7. AUTHORITY shall furnish the STATE with all necessary copies of work performed relating to the PROJECT. Upon completion of all work under this AGREEMENT, ownership and title to all engineering reports, documents, plans, and estimates produced will automatically be vested in the STATE and no further agreement will be necessary to transfer ownership to the STATE. The AUTHORITY may retain copies.
 8. The PROJECT design and construction 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 the STATE for approval via the processes outlined in the State Highway Design Manual and appropriate memoranda and design bulletins published by the STATE. In the event that the 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 the PROJECT in accordance with the current State Highway Design Manual section 82.5, "Effective Date for Implementing Revisions to Design Standards." The STATE shall consult with the AUTHORITY in a timely manner regarding the effect of proposed and/or required changes on the PROJECT.
 9. 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 the PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The PARTNERS agree that said material will not be distributed, released, or shared with any other organization, person or group other than the PARTNERS' employees, agents and consultants whose work requires access to the documents, except with the prior written approval of the party with the authority to authorize said release and as required or authorized by statute or the terms of this AGREEMENT.
 10. If any party receives a public records request, pertaining to the PROJECT under this AGREEMENT, that party will notify the other party within five working days of receipt and make the other party aware of any potentially-disclosable public records. No records will be disclosed prior to the time a response is required pursuant to the Government Code sections 6250 et seq in order to allow the PARTIES to consult with one another regarding the request. If a basis for doing so exists, the party receiving the request will implement the up-to-14-day extension described in Government Code section 6253, subdivision (c).

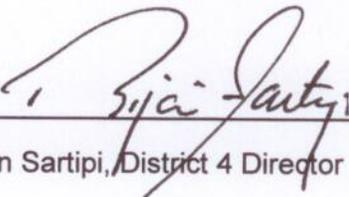
11. Nothing within the provisions of this AGREEMENT is intended to create duties or obligations to or rights in third parties who are not PARTNERS to this AGREEMENT or to affect the legal liability of either party to the AGREEMENT by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities that is different from the standard of care imposed by law.
12. No alteration or variation of the terms of this AGREEMENT shall be valid unless made by a formal amendment executed by the PARTNERS hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTNERS hereto.
13. Neither party will assign or attempt to assign their respective rights, duties or obligations under this AGREEMENT to a party that is not a signatory to this AGREEMENT, except with the prior written consent of the other party. Any such assignment or attempted assignment is void.
14. Any ambiguity contained in this AGREEMENT will not be interpreted against the PARTNERS. The PARTNERS waive the provisions of Civil Code section 1654.
15. A waiver of a party's performance under this AGREEMENT will not constitute a continuous waiver of any other provision.
16. A delay or omission to exercise a right or power under this AGREEMENT by any party does not waive a party's right to exercise any such right or power in the future. No waiver or release shall be a continuing waiver or release unless expressly agreed by the PARTNERS in writing.
17. PARTNERS will execute a formal written amendment if there are any changes to the commitments made in this AGREEMENT including the attachments.
18. If any provisions in this AGREEMENT are deemed to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other AGREEMENT provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this AGREEMENT.
19. Signatories may execute this AGREEMENT through individual signature pages provided that each signature is an original. This AGREEMENT is not fully executed until all exhibits, attachments, and original signatures are attached.
20. All exhibits and other documents attached to this AGREEMENT are hereby incorporated into this AGREEMENT by this reference.

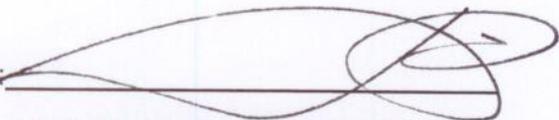
21. This AGREEMENT shall terminate upon reversion of the PROJECT assets to the STATE.

IN WITNESS WHEREOF, the PARTNERS executed this AGREEMENT effective as of _____, 2010.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

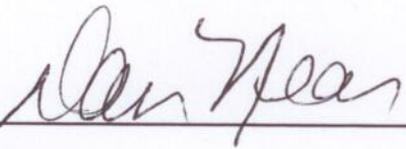
SAN FRANCISCO COUNTY
TRANSPORTATION AUTHORITY

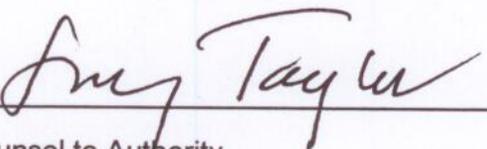
By: 
Bijan Sartipi, District 4 Director

By: 
José Luis Moscovich, Executive Director

Approved as to form and procedure:

Approved as to form:


Attorney
Department of Transportation


Counsel to Authority

FUNDING SUMMARY

<u>Source</u>	<u>STATE</u>	<u>AUTHORITY</u>	<u>Total</u> <u>(in millions)</u>
Federal	89.2		\$89.2
STATE SHOPP	174.8		\$174.8
SFCTA		128.9	\$128.9
Golden Gate Bridge		75.0	\$75.0
Marin/Sonoma Counties		<u>5.0</u>	<u>\$5.0</u>
Total			<u>\$472.9</u>