

AGENDA ITEM 7d
Treasure Island Development Authority
City and County of San Francisco
Meeting of January 11, 2023

Subject: Resolution Approving and Authorizing the Execution of a Memorandum of Agreement between the Treasure Island Development Authority and San Francisco County Transportation Authority to Provide Funding of \$3.505 million for the Yerba Buena Island Westside Bridges Seismic Retrofit Project (*Action Item*)

Contact: Robert Beck, Treasure Island Director

BACKGROUND

The SFCTA is preparing to construct the Westside Bridges Seismic Retrofit Project (“Westside Bridges Project” or “Project”). The Westside Bridges Project will demolish eight bridge structures and reconstruct a realigned roadway, six retaining walls, and a new undercrossing structure from the SFOBB to the intersection of Treasure Island Road and Macalla Road. This project will replace seven seismically deficient bridges and retrofit one bridge with a realigned roadway and retaining walls, a Class II bicycle facility, and a transit-only access on-ramp. Additionally, one structure will be seismically retrofitted and requires a column relocation. Construction of the Westside Bridges Project, along with Southgate Project, will complete the circulation improvements on Yerba Buena Island to support and facilitate improved access to and from the Bay Bridge, accommodating new traffic resulting from development of the islands and providing a seismically safe and improved roadway network for the public’s use.

TIDA asked the SFCTA, in its capacity as the Congestion Management Agency to the City and County of San Francisco, to lead the effort to prepare and obtain approval for all required technical documentation for the Westside Bridges Project, because of its expertise in funding and interacting with the California Department of Transportation (“Caltrans”) on design aspects of the project, as well as its expertise in implementing construction of major transportation projects. As such, the SFCTA has also led the effort in securing funding commitments for the Project. The project is shovel ready but for final funding actions to enable March 2023 contract award and to avoid further cost escalation. The project construction phase is estimated to cost \$113.7 million.

DISCUSSION

To fund the Project, the SFCTA has obtained commitments of \$110.2 million in funding through a combination of Federal, State, Bay Area Toll Authority (BATA), Local Partnership Program (LPP), and Prop K (San Francisco half-cent sales tax) funding for the Project (together, “Main Funding Sources”). To secure the Main Funding Sources and complete the Project, the SFCTA

has requested TIDA provide \$3.505 million in funding for the Project (“TIDA Funding”) in the case the SFCTA is not reimbursed by other funding sources. Pursuant to the MOA, the SFCTA agrees to use the Main Funding Sources, including local Prop K funds, to finance the cost of work until such time that the SFCTA is reimbursed for eligible work from the various funding sources. The cost of the construction phase of Project is estimated to be \$113.696 million, and it is anticipated that 100% of expenses will be reimbursed by a combination of Federal, State, BATA, LPP, Prop K and the TIDA Funding. Additionally, the SFCTA will not award the Construction Contract until a combination of Federal, State, BATA, LPP, Prop K, and TIDA Funding are secured.

The budget for Project Construction Phase is as follows:

Description of Work	Total Budget
1. Construction Capital	\$ 100,881,265
2. Construction Management and SFCTA Support	\$ 12,814,735
Total Construction Phase Budget	\$ 113,696,000

SFCTA and TIDA propose to enter into a Memorandum of Agreement (“Agreement”; attached as Exhibit A) to outline the funding plan for the Westside Bridges Project and TIDA’s reimbursement obligation in an amount not to exceed \$3,505,000. Pursuant to the MOA, the TIDA funding shall be allocated across three fiscal years, including \$1,000,000 in FY 2022-23, \$1,255,000 in FY 2023-24, and \$1,250,000 in FY 2024-25.

RECOMMENDATION

TIDA staff recommends the Authority Board authorize the Treasure Island Director (“Director”) to enter into the Memorandum of Agreement between the San Francisco County Transportation Authority and the Treasure Island Development Authority for Funding for the Yerba Buena Island Westside Bridges Seismic Retrofit Project.

EXHIBITS

- A. Draft of the Memorandum of Agreement between the San Francisco County Transportation Authority and the Treasure Island Development Authority Regarding Funding for the Yerba Buena Island Westside Bridges Seismic Retrofit Project.

Prepared by Jamie Querubin, Finance Manager

EXHIBIT A

Memorandum of Agreement between the Treasure Island Development Authority
and the San Francisco County Transportation Authority for Funding for the
Yerba Buena Island Westside Bridges Seismic Retrofit Project

MEMORANDUM OF AGREEMENT # 22/23-22

for

Funding for the Yerba Buena Island Westside Bridges Seismic Retrofit Project

THIS AGREEMENT is made and shall be effective on the [date 1: day] day of [month], [year], by and between the San Francisco County Transportation Authority (“Transportation Authority”) and the City and County of San Francisco (“City”) acting through the Treasure Island Development Authority (“TIDA”), referred to collectively as “Parties” or individually as “Party.”

RECITALS

- A. WHEREAS, the Transportation Authority has been designated as the Congestion Management Agency (CMA) for the City and County of San Francisco (the “City”) under State law. In this capacity, the Transportation Authority has a wide range of responsibilities that includes preparing the long-range Countywide Transportation Plan, prioritizing state and federal transportation funds designated for San Francisco, and developing and operating a computerized travel demand forecasting model.
- B. WHEREAS, TIDA is the local reuse authority for purposes of the redevelopment and conversion of former Naval Station Treasure Island (“NSTI”) to productive civilian uses, including portions of Yerba Buena Island (“YBI”).
- C. WHEREAS, TIDA asked the Transportation Authority, in its capacity as the CMA, to lead the effort to prepare and obtain approval for all required technical documentation for the YBI Westside Bridges Seismic Retrofit Project (“PROJECT”) because of its expertise in funding and interacting with the California Department of Transportation (“Caltrans”) on design aspects of the project, as well as its expertise in implementing construction of major transportation projects. The PROJECT is a critical component of island traffic circulation leading to and from SFOBB.
- D. WHEREAS, the Transportation Authority has obtained commitments of \$110.191 million in funding through a combination of Federal, State, BATA, Local Partnership Program (LPP), and Proposition K (“Prop K”) funding for the PROJECT (the “Main Funding Sources”).
- E. WHEREAS, TIDA will provide \$3.505 million in funding for the PROJECT (the “TIDA Funding”), as needed to secure the Main Funding Sources and complete the PROJECT.
- F. WHEREAS, the Transportation Authority agrees to use local Prop K funds, to finance the cost of work until such time that the Transportation Authority is reimbursed for eligible work from the other funding sources. The Transportation Authority is willing to do so on the understanding that the TIDA Funding and Prop K funds may be used to pay for interest and financing costs resulting therefrom.

- G. WHEREAS, the cost of the construction phase of PROJECT is estimated to be \$113.696 million and the Parties anticipate all but \$14.89 million of this expense to be reimbursed by a combination of Federal, State, BATA, and LPP funding, along with the TIDA Funding. The Transportation Authority will not award the Construction Contract until these funds have been allocated. The Construction Contract will be an agreed price contract.
- H. WHEREAS, this Agreement sets forth certain rights and obligations of the Transportation Authority and TIDA with respect to the funding for the PROJECT.

AGREEMENT

The Parties agree to the following:

1. **Construction Services.** The Transportation Authority shall provide Construction Services for the PROJECT on behalf of TIDA. The terms and scope of such Construction Services shall be defined in a separate memorandum of agreement between the Parties.
2. **Project Funding**
 - a. The Transportation Authority and TIDA anticipate that the total cost for the Construction Services required to complete the PROJECT (“Transportation Authority Construction Costs”) will be covered by the Main Funding Sources and the TIDA Funding, as shown in **Appendix A**. If, at any point, the Main Funding Sources do not become available for any reason, the funding from the Main Funding Sources becomes lower than the amounts shown on **Appendix A**, or if the Transportation Authority determines that the expected Transportation Authority Construction Costs will exceed the amount shown in **Appendix B**, the Transportation Authority and TIDA shall work together in an effort to identify other funding sources.
 - b. Except as provided herein, in no event shall the principal amount of the TIDA Funding exceed a “not-to-exceed amount” of Three Million Five Hundred Five Thousand Dollars (\$3,505,000), as outlined in **Appendix A**, “PROJECT Funding,” and **Appendix B**, “Construction Phase Budget”, attached hereto and incorporated by reference as though fully set forth herein, without the approval of TIDA’s Board of Directors and, if required under the SF Charter, the City’s Board of Supervisors. The TIDA Funding can be used by the Transportation Authority to pay for accrued interest or Fiscal Fees on the Transportation Authority Construction Costs.
 - c. The Transportation Authority and TIDA acknowledge that this Agreement memorializes a reimbursement obligation of TIDA to the Transportation Authority and shall not be construed as a grant or gift of funds from the Transportation Authority to TIDA.
3. **TIDA Reimbursement Obligation.**
 - a. TIDA and the Transportation Authority shall work jointly in good faith to seek state and federal bond, grant or appropriation funds, or other funds as needed, to pay for all or any portion of the construction support or construction work necessary for the PROJECT. If either Party becomes aware that any funding from the Main Funding Sources may not become available, that party shall immediately notify the other Party, and TIDA and the Transportation Authority shall work together in good faith to determine the correct course

of action in light of such fact. As directed by TIDA or on its own volition, the Transportation Authority shall promptly stop working on the PROJECT if, at any time, either Party determines that available funding may not exist to pay for such work. TIDA acknowledges that any such stop work order can result in additional cost, which shall be included as part of the Transportation Authority Construction Costs.

- b. Interest shall accrue on the outstanding unreimbursed Transportation Authority Construction Costs, compounded quarterly, at the City Treasurer's Pooled Investment Fund rate or the Transportation Authority's borrowing rate, whichever is applicable, beginning on the date when the Transportation Authority first incurs Transportation Authority Construction Costs and continuing until the Transportation Authority has received full reimbursement under this Section 3 from TIDA and applicable federal, state, regional or local agencies. Accrued and unpaid interest shall be deemed to be Transportation Authority Construction Costs as accrued. If the Transportation Authority has not issued long-term debt, the applicable interest rate will be the City Treasurer's Pooled Investment Fund rate, calculated quarterly. If the Transportation Authority has issued long-term debt for any purpose, the applicable interest rate will be the "all-in TIC" of the Transportation Authority's most recent long-term debt issuance. *(The all-in TIC is defined as: The discount rate, assuming semiannual compounding and a 30/360-day calendar, which sets the net present value of all payments of principal and interest equal to the par amount of bonds plus accrued interest plus premium less original issue discount less insurance premium less costs of issuance less other up-front expenses discounted to the issue date.)* If at any time the Transportation Authority issues long-term debt and that increases the applicable interest rate under this subsection, the Transportation Authority shall modify the rate to the appropriate interest rate under this subsection and use that new rate going forward. The Transportation Authority shall provide written notice to TIDA of any change in the interest rate and the date on which the Transportation Authority applied the new rate. Notwithstanding the foregoing, in no event shall the interest rate the Transportation Authority applies exceed the maximum rate permitted under California Government Code Section 53531.
- c. The Parties acknowledge the Transportation Authority is advancing Proposition K ("Prop K") funds to pay for Transportation Authority Construction Costs, with the intent that Prop K funds above the amount shown in **Appendix A** will be repaid by reimbursements from federal, state, BATA, LPP, or TIDA funds. For Transportation Authority Construction Costs advanced by the Transportation Authority that are not subject to interest payments under Subsection 3(b) above, the interest and fiscal charges (including but not limited to letter of credit fees, remarketing fees and rating agency fees) incurred by the Transportation Authority through its Commercial Paper Program ("Fiscal Fees") shall be applied to the lower of (1) the average quarterly outstanding unreimbursed Transportation Authority Construction Costs (including interest accrued pursuant to Paragraph 3(b), above) or (2) the total outstanding unreimbursed Transportation Authority Construction Costs (including interest accrued pursuant to Paragraph 3(b), above), beginning on the date when the Transportation Authority first incurs Transportation Authority Construction Costs and continuing until the Transportation Authority has received full reimbursement under this Section 3 from TIDA and applicable federal, state, regional or local agencies or other funding sources.
- d. All Transportation Authority Construction Costs, accrued interest and Fiscal Fees with respect to Construction Services under subsections (a) and (b) above are referred to in this

Agreement as the “Project Costs.” TIDA shall reimburse the Transportation Authority for all Project Costs agreed to be paid for by TIDA in writing (the “TIDA Reimbursement Obligation”). Notwithstanding anything to the contrary in this Agreement, the TIDA Reimbursement Obligation shall not include any costs incurred as a result of the Transportation Authority’s negligence or willful misconduct.

4. Payments.

- a. Parties agree that all PROJECT invoices for payment or reimbursement from all contractors, utility companies, etc. shall be submitted directly to the Transportation Authority for review and payment. TIDA may, at its discretion, review invoices related to construction activities and agrees to do so within a timeframe that allows timely payment.
- b. The Transportation Authority shall prepare and submit invoices for the TIDA Reimbursement Obligation, and supporting documentation to TIDA. The Transportation Authority shall have the discretion to submit invoices to TIDA may be submitted on a monthly, quarterly or annual basis as specified herein. TIDA shall reimburse the Transportation Authority for TIDA Reimbursement Obligation within forty-five (45) days from receipt of Transportation Authority invoice, up to the budget limit set forth below.
- c. TIDA has allocated in its FY 2022/23 budget \$1 million to pay for the TIDA Reimbursement Obligation under this Agreement, and shall include \$1.255 million in its FY 2023/24 budget and \$1.25 million in its 2024/25 budget to pay such costs. Any budgeted funds not used during a given fiscal year shall, subject to necessary government approvals, roll over to the next fiscal year.

5. **Controller’s Certification of Funds.** The terms of this Agreement shall be governed by and subject to the budget and fiscal provisions of the City Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by TIDA under this Agreement until the City Controller’s Office first certifies, pursuant to Section 3.105 of the City Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. TIDA shall use good faith efforts to seek appropriation and Controller’s certification of the funds necessary to reimburse the Transportation Authority in accordance with this Agreement. The Controller’s initial certification of funds for this Agreement shall not include the Transportation Authority Construction Costs. TIDA agrees to promptly submit to Controller whatever materials or information may be required or requested to obtain Controller’s certification of funds for the TIDA Reimbursement Obligation. TIDA shall promptly notify Transportation Authority in writing if the Controller does not so certify funds in a fiscal year. The Parties shall cooperate with each other and with Controller to seek timely certification of funds as and when needed.

6. **Term.** The term of this Agreement shall be from December 1, 2022 to February 28, 2030. Time extensions shall be by amendment to this Agreement and by mutual agreement between the Parties. TIDA’s Reimbursement Obligation under Section 3 and 4 shall survive beyond the term of this Agreement until paid in full.

7. **Disputes:** If and to the extent there are any disagreements between the Transportation Authority and TIDA, the Parties agree to meet and confer expeditiously in good faith to resolve the disagreements. To the extent the Parties are unable to resolve a dispute involving a matter

that would require TIDA to make an unreimbursed payment, and despite good faith efforts by the Parties to resolve such dispute, the directives of TIDA shall control so long as such directives are consistent with all other provisions of this and all other related Agreements and are consistent with governing law.

8. **Notices:** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Transportation Authority: **Ms. Cynthia Fong**
Deputy Director for Finance and Administration
San Francisco County Transportation Authority
1455 Market Street, 22nd Floor
San Francisco, California 94103
Phone: (415) 522-4800
Fax: (415) 522-4829
E-mail: cynthia.fong@sfcta.org

To TIDA: **Mr. Robert Beck**
Treasure Island Project Director
Treasure Island Development Authority
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Phone: (415) 274-0662
E-mail: Bob.Beck@sfgov.org

Any notice of default must be sent by registered mail.

9. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
10. **Right to Terminate.** Either party may terminate this Agreement, in whole or in part, at any time upon five (5) working days' prior notice. In the event of such a termination, Transportation Authority shall submit a final project progress report to TIDA identifying work completed and the total Project Costs incurred through the termination date within forty-five (45) days of such termination. TIDA's reimbursement obligation under Section 3 and 4 shall survive a termination of this Agreement for TIDA's Reimbursement Obligations incurred or relating to work performed prior to such termination in accordance with this Section 10.
11. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
12. **Audit and Inspection of Records.** The Parties agree to maintain and make available to the each other, during regular business hours, accurate books and accounting records relating to their work under this Agreement and the work of any third parties performing work on the Project. The Parties will permit each other to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or

personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than three years after the Transportation Authority receives final payment from TIDA. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the Parties by this Section.

IN WITNESS WHEREOF, The parties have executed this AGREEMENT on the date set forth above:

SAN FRANCISCO COUNTY
TRANSPORTATION AUTHORITY

The City and County of San Francisco, acting by
and through the TREASURE ISLAND
DEVELOPMENT AUTHORITY

Recommended by:

Recommended by:

Cynthia Fong
Deputy Director for Finance and Administration
San Francisco County Transportation Authority

Robert Beck
Treasure Island Director

Recommended by:

APPROVED AS TO FORM:
DAVID CHIU, City Attorney

Carl Holmes
Deputy Director for Capital Projects
San Francisco County Transportation Authority

Charles Sullivan, Deputy City Attorney

Approved by:

Tilly Chang
Executive Director
San Francisco County Transportation Authority

APPENDICES

Appendix A: PROJECT Funding

Appendix B: Construction Phase Budget

Appendix A
PROJECT Funding

Project Construction Funding	Amount
Federal Highway Bridge Program	54.840
State Prop 1B Local Bridge Seismic	7.105
Federal RAISE grant	18.000
Bay Area Toll Authority	2.000
San Francisco share SB 1 Local Partnership Program Formula funds	4.056
Bay Area Toll Authority share SB 1 Local Partnership Program Formula funds	5.000
Treasure Island Development Authority	3.505
Prop K (via fund exchange)	14.890
Caltrans HBP	4.300
Total funding	\$ 113.696

Appendix B

Construction Phase Budget

The budget for PROJECT Construction Phase is as follows:

Description of Work	Total Budget
1. Construction Capital	\$ 100,881,265
2. Construction Management and Authority Support	\$ 12,814,735
Total Construction Phase Budget	\$ 113,696,000

1 [Memorandum of Agreement – Westside Bridges]

2 **Resolution Approving and Authorizing the Execution of a Memorandum of**
3 **Agreement between the Treasure Island Development Authority and San**
4 **Francisco County Transportation Authority to Provide Funding of \$3.505 million**
5 **for the Yerba Buena Island Westside Bridges Seismic Retrofit Project.**

6 WHEREAS, Former Naval Station Treasure Island is a military base located on
7 Treasure Island and Yerba Buena Island (together, the "Base"), which is currently
8 owned by the United States of America, acting by and through the Department of the
9 Navy; and

10 WHEREAS, The Base was selected for closure and disposition by the Base
11 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and
12 its subsequent amendments; and

13 WHEREAS, The San Francisco County Transportation Authority ("SFCTA") has
14 been designated as the Congestion Management Agency ("CMA") for the City and
15 County of San Francisco (the "City") under State law. In this capacity, the SFCTA has a
16 wide range of responsibilities that includes preparing the long-range Countywide
17 Transportation Plan, prioritizing state and federal transportation funds designated for
18 San Francisco, and developing and operating a computerized travel demand
19 forecasting model; and

20 WHEREAS, TIDA asked the SFCTA, in its capacity as the CMA, to lead the effort
21 to prepare and obtain approval for all required technical documentation for the Westside
22 Bridges Seismic Retrofit Project (the "Project"), because of its expertise in funding and
23 interacting with the California Department of Transportation ("Caltrans") on design
24 aspects of the Project, as well as its expertise in implementing construction of major
25 transportation projects; and

WHEREAS, The Project is a critical component of island traffic circulation leading
to and from the San Francisco – Oakland Bay Bridge ("SFOBB"); and

1 WHEREAS, The SFCTA has obtained commitments of \$110.2 million in funding
2 through a combination of Federal, State, Bay Area Toll Authority (“BATA”), Local
3 Partnership Program (“LPP”), and Prop K funding for the Project (the “Main Funding
4 Sources”) and will provide construction management and other services for the
5 completion of the Project; and

6 WHEREAS, The SFCTA has requested TIDA provide \$3.505 million in funding
7 for the Project (the “TIDA Funding”), as needed to secure the Main Funding Sources
8 and complete the Project; and

9 WHEREAS, The SFCTA agrees to use the Main Funding Sources, including
10 local Prop K funds, to finance the cost of work until such time that the SFCTA is
11 reimbursed for eligible work from the various funding sources. The SFCTA is willing to
12 do so provided that TIDA agrees to reimburse the SFCTA for any Project costs incurred
13 by the SFCTA and not reimbursed by other funding sources, up to the \$3.505 million
14 committed by TIDA; and

15 WHEREAS, TIDA and the SFCTA have negotiated a memorandum of agreement
16 to memorialize the above commitments to the Project, including the TIDA Funding
17 obligation, a copy of which is on file with the Secretary of the TIDA Board of Directors
18 (the “MOA”); and

19 WHEREAS, The cost of the construction phase of Project is estimated to be
20 \$113.7 million and the Parties anticipate this expense to be 100% reimbursed by a
21 combination of Federal, State, BATA, LPP, Prop K and the TIDA Funding, and the
22 SFCTA will not award the Construction Contract until these funds have been secured;
23 and

24 RESOLVED, That the TIDA Board of Directors confirms that the MOA is
25 consistent with the Project and the Final Environmental Impact Report and the previous
environmental findings it made under the California Environmental Quality Act when it
approved the YBI Ramps Improvement Project; the TIDA Board of Directors further

1 finds that none of the circumstances that would require preparation of a supplemental or
2 subsequent environmental study under Public Resources Code Section 21166 or CEQA
3 Guidelines Section 15162 are present, in the sense that no changes to the project or the
4 project circumstances have occurred that would result in additional environmental
5 impacts, or in substantially increased severity of already identified environmental
6 impacts, there are no mitigation measures or alternatives that were previously identified
7 to be infeasible but would in fact be feasible, and no new mitigation measures or
8 alternatives that would substantially reduce the identified environmental impacts would
9 occur as a result of project implementation; and be it

10 FURTHER RESOLVED, That TIDA Board of Directors hereby authorizes the
11 Treasure Island Director to execute the MOA with SFCTA and to dedicate funding for
12 the Project in an amount not to exceed \$3,505,000 for costs relating to YBI Westside
13 Bridges Seismic Retrofit Project for the period from December 1, 2022 to February 28,
14 2030, as set forth in the MOA; and, be it

15 FURTHER RESOLVED, That the Board of Directors hereby authorizes the
16 Treasure Island Director or his designee to enter into any additions, amendments or
17 other modifications to the MOA that the Treasure Island Director determines in
18 consultation with the City Attorney are in the best interests of TIDA, that do not
19 materially increase the obligations or liabilities of TIDA, that do not materially reduce the
20 rights of TIDA, and are necessary or advisable to complete the preparation and
21 approval of the MOA, such determination to be conclusively evidenced by the execution
22 and delivery by the Treasure Island Director or his designee of the documents and any
23 amendments thereto.

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CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on January 11, 2023

Mark Dunlop, Secretary