

UNIT	PROJECT ID	PHASE	PROGRAM CODE	OBJECT	PROJECT NUMBER	ENCUMBRANCE DOCUMENT NO.
3811	0013000130	S	30.20.723.000	049	TCIF-32.2	75A0XXX
STATUTES	CHAPTER	FISCAL YEAR	ITEM	TASK SUBTASK	FUND SOURCE	AMOUNT
2011	33	2011-2012	2660-304-6056	1210 0000	TCIF-1B	\$10,512,000
I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance. FUNDS CERTIFIED BY:						DATE

AGREEMENT

THIS AGREEMENT made and entered into this 5th day of March 2013, by and between the STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as **State**, and THE CITY OF LOS ANGELES, a municipal corporation acting by and through its Board of Harbor Commissioners, a political subdivision of the State of California which includes Cities, Counties, Port Districts and Joint Powers Authorities, hereinafter referred to as **Public Agency**.

WITNESSETH

WHEREAS, pursuant to the provisions of Sections 8879.23(c)(1) and 8879.50 of the California Government Code, the California Transportation Commission (CTC), by Resolution No. TCIF –P–0708-01, issued on April 10, 2008, established Trade Corridors Improvement Fund (TCIF) Guidelines (Exhibit A attached); and

WHEREAS, The CTC initiated a process to select projects and the **Port of Los Angeles Berth 200 Rail Yard Track Connections – Segment 2** hereinafter **Project** was selected for funding. **The City of Los Angeles** hereinafter **Public Agency**; and

WHEREAS, on **August 23, 2012**, **Public Agency** entered into a Project Baseline Agreement, hereinafter **Baseline Agreement**, for the construction and maintenance of said **Project** (Project Baseline Agreement) (Exhibit B attached); and

WHEREAS, **Public Agency** has certified and reaffirms herein to **State** that sufficient **Public Agency** funds are available to construct the **Project**, and that all other matters, including regulatory approval and environmental clearance, prerequisite to awarding a construction contract within a period of one year after the allocation have been or will be taken care of within that time; and

WHEREAS, an agreement is to be entered into between **Public Agency** and **State** to provide reimbursement to **Public Agency** in a sum not to exceed the CTC allocation of

\$10,512,000 (Resolution TCIF-A-1213-05 at the March 2013 CTC Meeting) (Attachment I, II, III and IV) from the TCIF fund; and

WHEREAS, reimbursement is provided subject to the **Public Agency** establishing to the satisfaction of **State** that all sums expended by **Public Agency** for **Project** are reasonable and a necessary part of the **Project** as defined by the Commission Guidelines and the project's Baseline Agreement;

NOW THEREFORE, in consideration of the premises and mutual undertakings of the parties hereto, as hereinafter set forth, **State** and **Public Agency** agrees as follows:

1. **Public Agency** hereby reaffirms its prior certification that it has sufficient **Public Agency** funds to construct the **Project**.
2. **Public Agency** agrees to comply with all TCIF guidelines as if set forth fully herein and in the "**Baseline Agreement**".
3. The **Project** scope, a description of anticipated benefits, and delivery schedule are attached hereto as the Project Benefits Form (Exhibit E attached).
4. The **Project** budget and funding plan are attached hereto as the Project Programming Request Form (PPR) (Exhibit C attached).
5. The **Project** Study Report for the Port of Los Angeles West Basin Road Rail Access Improvements is attached hereto as the Final Project Study Report (Exhibit D attached).
6. **Public Agency** will undertake **Project** using its own documented management, project delivery procedures and practices.
7. The costs attributable to **Project** are limited to the following:

The funds will be limited to the costs of construction work.

Public Agency agrees that the 48 CFR, Chapter 1 Part 31 et seq., Contract Cost Principles and Procedures, Federal Acquisition Regulations System, shall be used to determine the allowable individual items of indirect cost. **Public Agency** agrees to comply with the applicable Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments and CFR 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments.

8. **Public Agency** agrees to submit quarterly reports on the activities and progress made toward implementation of the **Project**, including **Project** development prior to receipt of a TCIF allocation, to the California Transportation Commission and to the California Department of Transportation.
9. As promptly as possible, and in any event within one year after the TCIF allocation, **Public Agency** shall award a contract for construction of **Project** pursuant to the laws governing the **Public Agency** in the advertising and award of public construction contracts, and in conformance with plans and specifications prepared by or on behalf of **Public Agency**. Construction shall be under the control of **Public Agency**.

10. As the work progresses, and upon receipt of a valid invoice, **State** will promptly reimburse **Public Agency** all allowable construction costs authorized, not to exceed the \$10,512,000 allocated/\$25,700,000 project cost, the amount approved for allocation under the TCIF Program. The **Public Agency** shall submit invoices in accordance with Chapter 5 of the California Department of Transportation's Local Assistance Procedures Manual. The final invoice shall include a detailed statement of all costs, both reimbursable and matching, as required under the TCIF Program Guidelines. Should the total construction costs for the project, as described, be less than or equal to the original construction costs, those cost savings are to be returned to the **State** as immediately due and payable. The cost savings reimbursement shall be in proportion to the TCIF funding portion of the construction costs.
11. Within six (6) months after the **Project** becoming operable, the **Public Agency** will provide a final delivery/close out report to program manager. Final reports will be posted on the bond accountability web site and made available to the California Transportation Commission and the **State**. The report shall include a comparison between the **Project** application and the final **Project** detailing differences in the scope of the completed **Project**, its final costs compared to the approved **Project** budget, actual construction schedule compared to the initial **Project** schedule, and performance compared to anticipated benefits.
12. **Public Agency** will also provide a Final Bill to supplement the final delivery report at the completion of the **Project**. The **Final Bill** is to reflect final **Project** expenditures at the conclusion of all **Project** activities. The **Final Bill** will consist of a detailed statement of the cost of the **Project**, which will be furnished to the **State**. Upon approval of the "Final Bill" **State** will pay **Public Agency** the balance not already reimbursed, if any, of "State's share of said costs. If upon final accounting it develops that **State** previously paid more than its share of said participating portion of **Project** cost, computed in said manner, **Public Agency** will refund to bond fund the difference between **State's** share of the participating portion of **Project** cost, and the amount paid by **State**.
13. **Public Agency** agrees that the **State**, the California Department of General Services, the California Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. **Public Agency** agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated. **Public Agency** agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the **State** to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
14. Any obligation by **State** for payment of moneys contained herein is subject to and contingent upon the **Public Agency** establishing to the satisfaction of **State** that all sums

- expended by **Public Agency** for **Project**, for which **Public Agency** requests partial reimbursement from **State**, are reasonable and are a necessary part of **Project**.
15. Payment of invoiced **State** funds to **Public Agency** for **State's** share of the **Project**, must be made within four (4) years after the date of project allocation, otherwise the un-disbursed balance shall revert to **State**.
 16. Any progress payments made by **State** pursuant to Section 9 herein are not an admission by **State** that such expenditures were reasonable and a necessary part of the **Project**, and if **State** finds later that such expenditures were not reasonable and a necessary part of the **Project**, **Public Agency** will reimburse **State** for such advance funds.
 17. Two (2) copies of each invoice shall be submitted to the **State**.
 18. All invoices and all written correspondence from **Public Agency** to **State** will reference this Agreement Number 75A0XXX.
 19. All **Public Agency** invoices for payments are to be submitted to the following address:

California Department of Transportation
Division of Rail
P.O. Box 942874-MS 74
Sacramento, CA 94274-001

Attn: Trade Corridors Improvement Fund (TCIF)

20. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
21. ASSIGNMENT: This Agreement is not assignable in whole or in part, without the consent of the **State** in the form of a formal written amendment.
22. PERIOD OF PERFORMANCE: Reimbursable work under this Agreement shall begin no earlier than **March 5, 2013**, and will terminate on **March 4, 2016**, unless there is a formal written amendment extending the period of performance.
23. INDEMNIFICATION: **Public Agency** agrees to indemnify, defend and save harmless the **State**, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
24. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the **State** of California.

25. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
26. RESOLUTION: A County, City, District, or other local public body must provide the **State** with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, and authorizing execution of the agreement.
27. AIR OR WATER POLLUTION VIOLATION: Under the **State** laws, the **Public Agency** shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
28. DISPUTES
- a) Any dispute concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by the Caltrans Contract Officer, who may consider any written or verbal evidence submitted by the contractor. The decision of the Contract Officer, issued in writing, shall be the final decision of Caltrans.
 - b) Neither the pendency of a dispute nor its consideration by the Contract Officer will excuse the **Public Agency** from full and timely performance in accordance with the terms of the Agreement.
 - c) The final decision by the Caltrans Contract Officer does not preclude subsequent litigation of the dispute in a court of competent jurisdiction.
 - d) **Public Agency** shall continue with its responsibilities under this Agreement during any dispute.
29. TERMINATION
- a) The Department of Transportation reserves the right to terminate this Agreement without cause upon thirty (30) days written notice to the **Public Agency** or immediately in the event of material breach by the **Public Agency**.
 - b) In the event that the total contract amount is expended prior to the expiration date, the **State** may, at its discretion, terminate this contract with 30 days notice to **Public Agency**.
30. LAWS TO BE OBSERVED: The **Public Agency** shall keep fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over

the same. **Public Agency** shall at all times observe and comply with, and shall cause all agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work. The **Public Agency** shall protect and indemnify the **State** of California and all officers and employees thereof connected with the work against any claim, injury, or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the contractor, a subcontractor, or an employee. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or Agreement for the work in relation to any such law, ordinance, regulation, order, or decree, the **Public Agency** shall immediately report the same to the contract manager in writing.

31. SPECIFIC STATUTORY REFERENCE: Any reference to certain statutes in this Agreement shall not relieve the **Public Agency** from the responsibility of complying with all other statutes applicable to the service, work, or rental to be furnished hereunder.

32. LIABILITY INSURANCE PROVISIONS

- a) **Public Agency** is responsible for any deductible or self-insured retention contained within the insurance program.
- b) The insurance policy shall contain a provision that states that coverage will not be cancelled without 30 days prior written notice to the **State**.
- c) Coverage must be in force for the complete term of this Agreement. If insurance expires during the term of this Agreement, a new certificate must be received by the **State** at least ten (10) days prior to the expiration of this insurance. This new insurance must still meet the terms of this Agreement.
- d) In the event **Public Agency** fails to keep in effect at all times the specified insurance coverage, the **State** may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of the Agreement.
- e) Any insurance required to be carried shall be primary, and not excess, to any other insurance carried by the **State**.
- f) The **State** will not be responsible for any premiums or assessments on the policy.

1. Commercial General Liability

- i. **Public Agency** shall maintain general liability with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the contractor's limit of liability.

- ii. The State of California, its officers, agents, employees, and servants shall be included as additional insured, but only with respect to work performed for the State of California under this Agreement. The insurance carrier should provide an endorsement for the additional insured statement.
2. Workers' Compensation/Employer's Liability: **Public Agency** shall maintain statutory workers' compensation and employer's liability coverage for all its employees who will be engaged in the performance of the Agreement, including special coverage extensions where applicable. Employer's liability limits of \$1,000,000 per incident shall be required.
33. LABOR CODE COMPLIANCE: PREVAILING WAGES: If the work performed on this **Project** is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" in that it is construction, alteration, demolition, installation, repair or maintenance **Public Agency** must conform to the provisions of Labor Code sections 1720 through 1815 and all applicable regulations and coverage determinations issued by the Director of Industrial Relations. **Public Agency** agrees to include prevailing wage requirements in its contracts for public work. Work performed by **Public Agency's** own forces is exempt from the Labor Code's prevailing wage requirements.
34. PREVAILING WAGE REQUIREMENTS IN SUBCONTRACTS: **Public Agency** shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a public work as defined in Labor Code section 1720(a)(1). Subcontracts shall include all prevailing wage requirements set forth in **Public Agency's** contracts.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

BY

Debra Anderson, Contract Officer
Division of Procurement and Contracts

BY

William D. Bronte, Chief
Division of Rail

**The City of Los Angeles, a municipal
corporation acting by and through its Board of
Harbor Commissioners**

BY

Geraldine Knatz Ph.D. Executive Director

Approve as to Form


