

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Karen Kinser, Senior Civil Engineer, via Director of Public Works/City Engineer and City Manager

SUBJECT: US 101/Candlestick Supplemental Technical Studies Funding Agreement with the San Mateo County Transportation Authority and Professional Services Agreement with consultant Biggs Cardosa Associates Inc.

DATE: October 21, 2013

City Council Goals:

To maintain and improve infrastructure. (#3)

To promote intergovernmental opportunities which enhance services and/or reduce the cost of operations and services to city residents. (#10)

Purpose:

To obtain Council's approval of two agreements that will use grant funds to perform Supplemental Technical Studies related to the US 101/Candlestick Interchange project, the Geneva Avenue Extension, and neighboring developments; the first agreement being with the San Mateo County Transportation Authority (SMCTA) and the second with consultant Biggs Cardosa Associates, Inc.

Recommendation:

1. Approve the Funding Agreement San Mateo County Transportation Authority Measure A Funds US 101/Candlestick Interchange, and authorize the Mayor to sign the agreement on the city's behalf.
2. Approve the Professional Services Agreement for the 101/Candlestick Interchange Supplemental Technical Studies with consultant Biggs Cardosa Associates Inc., and authorize the Mayor to sign the agreement on the city's behalf.

Background:

In July of 2012, Council approved a resolution in support of a Measure A Highway Program Cycle 1 application for the US 101/Candlestick Interchange Supplemental Technical Studies (see Attachment 3). The application for \$400,000 in consultant fees was subsequently approved, and the SMCTA recently forwarded the attached Funding Agreement for execution. Staff requested and obtained a proposal from consultant Biggs Cardosa Associates Inc. (BCA) to perform the

studies. BCA was previously hired as the lead consultant to prepare the Project Study Report (PSR) and all associated documents for the 101/Candlestick Interchange and the Geneva Avenue Extension, and is uniquely qualified to complete this supplemental work due to their involvement in the PSR effort.

The US 101/Candlestick Interchange (Interchange Project) Supplemental Technical Studies are necessary due to the multiple projects and proposed developments in the bi-county area (the northeastern portion of San Mateo County, at its border with the City & County of San Francisco) that will impact traffic. The Interchange Project together with the Geneva Avenue Extension are considered critical projects needed to address the future traffic impact issues. Staff considers it vital to review the Interchange Project with respect to potential development impacts as currently understood, including the proposed Geneva Avenue Extension, by performing the Supplemental Technical Studies to the PSR.

Both the Interchange Project and the Geneva Avenue Extension are included in the Metropolitan Transportation Commission's Transportation 2035 Plan and the San Mateo County's Measure A Expenditure Plan, the Bi-County Transportation Study, the City of Brisbane's General Plan, and numerous development areas' Environmental Impact Reports.

Discussion:

If the recommended action is not taken, then the City will not be able to use the awarded transportation related funds from the San Mateo County Transportation Authority Measure A Highway Program Call for Projects, First Cycle.

Fiscal Impact:

The direct cost to hire a consultant to complete the technical study will be funded by the Measure A grant money.

Measure of Success

Completion of the US 101/Candlestick Interchange Supplemental Technical Studies project.

Attachments:

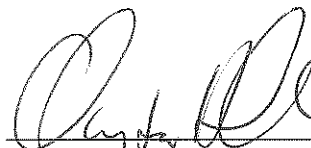
1. Funding Agreement San Mateo County Transportation Authority Measure A Funds US 101/Candlestick Interchange
2. Professional Services Agreement with consultant Biggs Cardosa Associates, Inc.
3. 7/23/12 Staff Report



Senior Civil Engineer



Director of Public Works/City Engineer



City Manager

**FUNDING AGREEMENT
SAN MATEO COUNTY TRANSPORTATION AUTHORITY MEASURE A FUNDS
US 101/CANDLESTICK INTERCHANGE**

This FUNDING AGREEMENT (“Agreement”) is made this ___ day of _____, 2013 by and between the SAN MATEO COUNTY TRANSPORTATION AUTHORITY (“TA”) and the CITY OF BRISBANE (“SPONSOR”), together referred to herein as the “Parties.”

RECITALS

WHEREAS, on June 7, 1988, the voters of San Mateo County approved a ballot measure to allow the collection and distribution by the San Mateo County Transportation Authority (TA) of a half-cent transactions and use tax in San Mateo County for 20 years with the tax revenues to be used for highway and transit improvements pursuant to the Transportation Expenditure Plan presented to the voters (“Original Measure A”); and

WHEREAS, on November 2, 2004, the voters of San Mateo County approved the continuation of the collection and distribution by the TA of the Measure A 1/2 cent transaction and use tax for an additional 25 years to implement the 2004 Transportation Expenditure Plan, beginning January 1, 2009 (“New Measure A”); and

WHEREAS, the City of Brisbane (“SPONSOR”) requested that the TA consider funding \$400,000 in Measure A funds for the US 101/Candlestick Interchange (“Project”); and

WHEREAS, Project meets the intent of the 1988 Transportation Expenditure Plan, the 2004 Transportation Expenditure Plan and the TA’s 2009–2013 Strategic Plan; and

WHEREAS, on October 4, 2012, the TA’s Board of Directors programmed and allocated up to \$400,000 from the Original Measure A Highway Program Category for the preliminary planning phase (“SCOPE OF WORK”) for the Project through Resolution 2012-17; and

WHEREAS, the TA and SPONSOR desire to enter into this Agreement to establish the process, terms and conditions governing the allocation and expenditure of Measure A funds on the Project.

Now therefore, the Parties agree as follows:

SECTION 1: SCOPE OF WORK Oversight and Reporting

1.1 SPONSOR Oversight; Work Plan. SPONSOR shall be responsible for the completion of the SCOPE OF WORK as described in Exhibit A, "Scope of Work Information," which is attached to this Agreement and incorporated herein by this reference. SPONSOR shall assume responsibility for procuring and administering any professional service and/or other contracts entered into in connection with the SCOPE OF

WORK. SPONSOR shall oversee completion of the SCOPE OF WORK. Though SPONSOR may appoint a designee or engage contractor(s) to perform work necessary for SCOPE OF WORK completion, SPONSOR will remain ultimately responsible to the TA for performance of all responsibilities set forth herein.

1.2 Required Approvals. Prior to commencement of the SCOPE OF WORK, SPONSOR or its designee (e.g., a consultant) to obtain all applicable local, state and federal approvals and permits for the SCOPE OF WORK. In addition, SPONSOR shall comply with all applicable federal, state and local laws and regulations applicable to the Project. Any right-of-way activities included as part of the SCOPE OF WORK shall be conducted in accordance with the then-current version of the Caltrans Right-of-Way manual.

1.3 Contract Award and Change Orders. The SPONSOR shall comply with state and local agency requirements for the award of any contract(s) for the performance of the SCOPE OF WORK and any change orders. As the SCOPE OF WORK proceeds, the SPONSOR shall advise the TA of any contracts awarded and change orders issued to any contract as part of the regular progress reporting requirements (Section 1.4). Notice of any contracts and change orders provided to the TA shall not constitute approval by the TA of the contracts and change orders nor obligate the TA to provide funds in excess of its maximum contribution stated in Section 2.1 of this Agreement.

1.4 Progress Reports. SPONSOR shall prepare and submit to the TA monthly progress reports during the entire term of the SCOPE OF WORK and covering all SCOPE OF WORK activities for work completed during the previous month using the template in Exhibit B. The reports shall describe: the current status of, and any changes in, scope, schedule, budget, and funding plans of the SCOPE OF WORK and the Project; any risk factors; the work performed during the previous month and projected for the next three months; SCOPE OF WORK Costs (as defined in Section 2.1, below) projected to be expended during the next three months; and any other information requested by the TA.

1.5 Final Report. Within ninety (90) days of the SPONSOR's final acceptance of the SCOPE OF WORK and all incidental work, SPONSOR shall furnish the TA with a final report detailing, but not limited to, the following:

- a) A description of the Project, including a statement detailing the overall progress and success of the SCOPE OF WORK and the Project, a compilation of any data collected during the active phase(s) of the Project, and changes/additions to the scope of the Project.
- b) Total costs for the SCOPE OF WORK, including an accounting of all Measure A Funds expended in connection with the SCOPE OF WORK, and reflecting any unexpended Measure A Funds that may remain.
- c) An explanation and the status of any outstanding obligations or potential obligations related to the SCOPE OF WORK.

- d) A discussion of any pertinent issues or problems that arose during the implementation of the SCOPE OF WORK.
- e) Any copies of press articles, press releases, newsletter articles and any other publicity materials regarding the Project.
- f) Written confirmation that no further reimbursements associated with the SCOPE OF WORK are anticipated and that all draw-down requests have been made.

1.6 Access to Records and Record Retention. At all reasonable times, SPONSOR shall permit the TA access to all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the SCOPE OF WORK by the SPONSOR or any contractor or consultant of the SPONSOR. SPONSOR shall also make available to the TA upon request any professional service agreements, change orders and any other agreements that are entered into for the performance of Project related work and services. The SPONSOR shall provide copies of any documents described in this Section to the TA if the TA requests such documents. SPONSOR shall retain all records pertaining to the SCOPE OF WORK for at least three years after completion of the Project.

1.7 Audits.

- a) The TA, or its authorized agents, may, at any reasonable time during business hours, conduct an audit of the SPONSOR's performance under this Agreement. The SPONSOR shall permit the TA, or its authorized agents, to examine, inspect, make excerpts from, transcribe or photocopy books, documents, papers and other records of the SPONSOR which the TA reasonably determines to be relevant to this Agreement.
- b) SPONSOR shall transmit to the TA the Independent Auditor's Report prepared for SPONSOR's Comprehensive Annual Financial Report within thirty (30) days of receipt by SPONSOR. The SPONSOR shall highlight the section of the Comprehensive Annual Financial Report that pertains to the Measure A funding.

SECTION 2: Funding and Payment

2.1 Funding Commitment. The TA shall allocate to the SPONSOR up to \$400,000 for reimbursement of expenditures related to the SCOPE OF WORK ("SCOPE OF WORK Costs") as provided in this Section 2. The SPONSOR will contribute, or provide for the contribution of, the entire amount in excess of \$400,000 needed to complete the SCOPE OF WORK. The TA's funding commitment under this Agreement shall in no way establish a right in the SPONSOR to receive additional funding from the TA in connection with or related to this Project. All funding obligations of the TA under this Agreement are subject to downward adjustment based on actual sales tax receipts for the fiscal years indicated.

The SPONSOR shall assess and confirm its ability to complete the SCOPE OF WORK within budget as part of the monthly reporting requirements established in Section 1.4, above. The SPONSOR shall further notify the TA between reporting cycles if the SPONSOR determines that the budget will not be sufficient to complete the SCOPE OF WORK. The TA retains authority to suspend its funding obligation as set forth in Section 3.4 of this Agreement upon such notice, and until the SPONSOR develops a credible funding plan acceptable to the TA to fund and complete the SCOPE OF WORK.

2.2 Use of Funds.

- a) Measure A funds shall be used only for direct eligible costs to complete the SCOPE OF WORK. Reimbursement for the following costs will require detailed documentation in accordance with generally-accepted accounting principles:
 - i. SCOPE OF WORK phases or components such as stakeholder/public outreach; development of planning studies, project initiation documents (PID), project study reports (PSR), environmental clearance, project approval and environmental document (PA&ED), project design, and plans specifications and estimates (PS&E); regulatory agency review; acquisition of right-of-way; construction, and construction management;
 - ii. Costs directly tied to the implementation of the SCOPE OF WORK as more specifically defined in EXHIBIT C, "Definitions of Eligible Costs for Reimbursement," which is attached to this Agreement and incorporated herein by this reference;
 - iii. SPONSOR staff time for project implementation, limited to documented direct hourly labor charges (salaries, wages and benefits); and
 - iv. Project administration costs, which are limited to 5% of the Measure A funds committed to the SCOPE OF WORK under this Agreement. Such costs are further limited to costs associated with entering into a Measure A Highway funding agreement; accounting, progress/status monitoring and reporting as required under this Agreement; and invoicing for Measure A Highway funds for the SCOPE OF WORK under this Agreement.

- b) The following costs are *not* eligible for Measure A Highway Funds reimbursement:
 - i. SPONSOR's costs which are unrelated to the SCOPE OF WORK;
 - ii. Costs for SPONSOR's director-level staff, such as a City Manager, City Engineer, Finance Director and City Attorney;
 - iii. Maintenance, rehabilitation, routine operations of the Project or other facilities or programs; and
 - iv. Development of proposals/applications for Measure A or other funding programs.

- c) Eligible costs are defined in greater detail in EXHIBIT C, "Definitions of Eligible Costs for Reimbursement." If SPONSOR wishes to undertake items of work not covered under the SCOPE OF WORK concurrent with performing the SCOPE OF WORK, the cost for including and undertaking the additional work shall be segregated, and the costs borne exclusively by the SPONSOR from a non-Measure A Highway Program funding source(s).
- d) SPONSOR agrees that it shall use funds provided pursuant to this Agreement to supplement existing revenue, that funds provided pursuant to this Agreement may not be used to replace other local taxes or revenues already programmed and available for use for the same purpose, and that the SPONSOR will use funds provided pursuant to this Agreement only for the SCOPE OF WORK.

If the TA determines that the SPONSOR has used funds provided pursuant to this Agreement other than for the approved SCOPE OF WORK, the TA will notify SPONSOR of its determination. The SPONSOR shall, within thirty (30) days of notification of the TA's determination, either (i) repay such funds to the TA, or (ii) provide to the TA an answer detailing the SPONSOR's understanding of how the funds in question were spent for the approved SCOPE OF WORK, to which the TA will respond within thirty (30) days of receipt. The TA's response will be final, unless otherwise stated in the response, and the SPONSOR shall repay any funds determined to have been used other than for the approved SCOPE OF WORK within thirty (30) days.

2.3 Reimbursement Basis. SPONSOR may seek reimbursement for SCOPE OF WORK Costs incurred after the execution of this Agreement. SCOPE OF WORK Costs must be incurred and paid by the SPONSOR prior to asking for reimbursement from the TA. Sufficient documentation must accompany all requests for reimbursement.

2.4 Accounting and Request for Reimbursement Procedures. SPONSOR, in coordination with and to the satisfaction of the TA, shall establish procedures for SCOPE OF WORK accounting and requests for reimbursement. These procedures will track and reflect the accumulation of the TA's share of costs for all work within the SCOPE OF WORK to be funded with Measure A Funds under this Agreement. In all cases, SPONSOR shall maintain all necessary books and records in accordance with generally accepted accounting principles.

2.5 Invoices; Payments.

- a) SPONSOR shall prepare and submit billing statements consistent with the "Reimbursement Claim Form," which is attached to this Agreement as Exhibit D and incorporated herein, with all required supporting documentation, which may include but is not limited to, copies of vendor invoices, timesheets, backup documentation, checks, and payment advice, requesting reimbursement of

Measure A funds for the TA's share of costs for the SCOPE OF WORK as contemplated by this Agreement.

- b) For all real property acquisitions for which SPONSOR seeks reimbursement from the TA, SPONSOR shall provide the following supporting documentation for each property:
 - i. Copies of the final real estate appraisal and any appraisal review conducted on behalf of SPONSOR;
 - ii. Written confirmation that the acquisition process was conducted in accordance with the then-current version of the Caltrans Right-of-Way manual;
 - iii. A Phase One Environmental Assessment and any recommended additional testing (unless waived by the TA);
 - iv. Copy of the offer package provided to the property owner(s);
 - v. Copy of the Notice of Exemption or other required document for environmental clearance under CEQA/NEPA for the purchase of the property, and evidence of the date of filing such Notice; and
 - vi. Written justification acceptable to the TA of any settlement at an amount higher than the offer.
- c) For each voluntary real property transaction, SPONSOR shall also provide:
 - i. Copy of the fully executed purchase and sale agreement;
 - ii. Copy of an executed and recorded deed, in a form consistent with the requirements set forth in the then-current Caltrans Right-of-Way manual;
 - iii. Copy of the Policy of Title insurance; and
 - iv. Copy of the final closing statement from the escrow.
- d) For each real property acquisition undertaken through condemnation, SPONSOR shall also provide:
 - i. Copy of the recorded Final Order of Condemnation; and
 - ii. Copy of the litigation guarantee issued by a title insurer.
- e) SPONSOR shall include a detailing of the TA's share of SCOPE OF WORK Costs, including listings by categories/tasks for all work to be funded under this Agreement with each Reimbursement Claim Form.

f) The TA shall endeavor to disburse reimbursements for approved SCOPE OF WORK Costs within thirty (30) days after the TA's approval of each claim, subject to the limits on the TA's maximum contribution as established in Section 2.1. The TA's obligation to reimburse SCOPE OF WORK Costs to the SPONSOR as provided in this section shall be conditioned upon the TA's prompt receipt of monthly progress reports from SPONSOR pursuant to Section 1.4 above.

g) Invoices are to be submitted, no more frequently than once a month, by mail to:

Accounts Payable
San Mateo County Transportation Authority
1250 San Carlos Avenue
San Carlos, CA 94070

Or by e-mail to: <accountspayable@samtrans.com>

SECTION 3: Term

3.1 Term. The term of this Agreement shall commence upon the execution of this Agreement and shall conclude upon the earliest of: (a) the TA's final reimbursement to SPONSOR for work performed hereunder, (b) termination by SPONSOR or the TA pursuant to this Section 3, or (c) October 4, 2015.

3.2 SPONSOR's Right to Terminate; Repayment upon Termination. SPONSOR may at any time terminate the SCOPE OF WORK by giving ten (10) days' written notice to the TA of its election to do so. Upon such termination, SPONSOR shall not be reimbursed for any further SCOPE OF WORK Costs and shall reimburse the TA for all funds paid to the SPONSOR in connection with the SCOPE OF WORK, and for all costs incurred by the TA in connection with the SCOPE OF WORK, within ninety (90) days of the TA's submission to SPONSOR of a detailed statement of such payments and costs. SPONSOR shall *not* be required to reimburse funds expended on any work product(s) (including but not limited to any technical studies or documents) (a) which the TA deems, in its sole discretion, to be completed and satisfactory, and (b) of which the TA opts, in its sole discretion, to retain ownership, including the right for future unlimited use.

3.3 Termination by the TA. The TA may terminate this Agreement, with or without cause, by giving ten (10) days' written notice of such termination. If the TA terminates the Agreement for SPONSOR's default, SPONSOR shall reimburse the TA for all funds paid to the SPONSOR in connection with the SCOPE OF WORK, and for all costs incurred by the TA in connection with the SCOPE OF WORK, within ninety (90) days of the TA's submission to SPONSOR of a detailed statement of such payments and costs. SPONSOR shall *not* be required to reimburse funds expended on any work product(s) (including but not limited to any technical studies or documents) (a) which the

TA deems, in its sole discretion, to be completed and satisfactory, and (b) of which the TA opts, in its sole discretion, to retain ownership, including the right to future unlimited use. If the TA terminates the Agreement for convenience, the TA shall be obligated to pay to SPONSOR all SCOPE OF WORK Costs and expenses incurred by SPONSOR up to the date of notice of termination, as well as all reasonable costs and expenses incurred to effect such termination.

3.4 Expiration/Suspension of TA's Financial Obligations. Any and all financial obligations of the TA pursuant to this Agreement shall expire upon the expenditure of TA's maximum contribution to the SCOPE OF WORK as established in Section 2.1 above or the conclusion of Term as defined in Section 3.1, whichever occurs first. The TA reserves the right to suspend its financial obligation, with ten (10) days' advance notice, in the event the SPONSOR identifies a risk of not being able to complete the SCOPE OF WORK within budget. If the SPONSOR cannot provide a credible funding plan acceptable to the TA to fund and complete SCOPE OF WORK, the TA may terminate this agreement. If SPONSOR identifies a risk of not being able to complete the SCOPE OF WORK within budget, failure to report such risk to the TA shall be cause for termination under Section 3.3.

3.5 Time of Performance. The SCOPE OF WORK shall be completed no later than October 4, 2015.

3.6 Time Extension. If the SCOPE OF WORK cannot be completed within the Time of Performance as defined in Section 3.5, the Sponsor shall submit a request in writing to the TA no later than six (6) months before the Time of Performance for an extension for the Time of Performance. The TA shall review the request, and grant the extension if it is justified in TA's sole and complete discretion. Costs incurred for the SCOPE OF WORK after the Time of Performance would be at risk of denial for reimbursement by the TA. The unreimbursed portion of the Measure A allocation would be retained by the TA for the Measure A Highway Program.

SECTION 4: Indemnification and Insurance

4.1 Indemnity by SPONSOR. SPONSOR shall fully release, indemnify, hold harmless and defend (with counsel satisfactory to Indemnitees, as defined below) the TA and its directors, officers, employees and agents, and each of them (collectively, "Indemnitees") from and against all liability, claims, suits, actions, costs or expenses, including claims for loss of or damage to property and for injuries to or death of any person (including but not limited to the property or employees of each party) when arising out of or resulting from any act or omission by SPONSOR, its agents, employees, contractors or subcontractors in connection with any aspect of the SCOPE OF WORK or the Project, including but not limited to the design, construction, real property acquisition or relocation assistance activities, inverse condemnation claims, operations and/or maintenance of said Project, and SPONSOR's performance of obligations and covenants established in this Agreement. SPONSOR shall also fully release, indemnify, hold

harmless and defend Indemnitees from and against any and all claims or suits that may be brought by any of its contractors or subcontractors performing work in connection with or related to the SCOPE OF WORK. SPONSOR's obligation to defend shall include the payment of all attorneys' fees and all other costs and expenses of suit, and if any judgment is rendered, or settlement entered, against any Indemnatee, SPONSOR shall, at its expense, without any use of Measure A funds, satisfy and discharge the same. Finally, SPONSOR shall indemnify the Indemnitees from and against any and all losses, claims, liabilities, costs and expenses arising from termination pursuant to Section 3.2 of this Agreement.

Application of this Section 4.1 shall include but not be limited to, any and all claims and expenses associated with the response to, removal and remediation of the release of hazardous chemicals or substances related to implementation of the SCOPE OF WORK, including without limit, payment of any fines or penalties levied by any agency as a result of such release. For purposes of this paragraph, the term "claims" shall include (1) all notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction; and (2) any claim, cause of action, or administrative or judicial proceeding brought against the Indemnitees for any loss, cost (including reasonable attorneys' fees), damage or liability, sustained or suffered by any person or entity, including the TA.

This indemnification shall survive termination or expiration of this Agreement.

4.2 Insurance. For the purposes of this Insurance section, "Entity" is defined as the entity designing and/or performing the work funded by this agreement. The Entity may be the SPONSOR, a contractor of SPONSOR, another body on behalf of which SPONSOR submitted its funding application, or a contractor of such other body. If the Entity is not the SPONSOR, SPONSOR shall require by contract that the Entity will provide the appropriate insurance for the work being performed. The insurance requirements specified in this section shall cover the Entity's own liability and any liability arising out of work or services of the Entity's subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") working on the Project.

- a) Minimum Types and Scope of Insurance. The Entity is required to procure and maintain at its sole cost and expense insurance subject to the requirements set forth below. Such insurance shall remain in full force and effect throughout performance of the SCOPE OF WORK. The Entity is also required to assess the risks associated with work to be performed by Agents and to require that Agents maintain adequate insurance coverage's with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, the Entity shall be responsible for and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling the Entity's indemnity obligations as to itself or any of its Agents in the absence of coverage. SPONSOR and/or the Entity may self-insure against the

risks associated with the SCOPE OF WORK, but in such case, shall waive subrogation in favor of the TA respecting any and all claims that may arise.

- i. Workers' Compensation and Employer's Liability Insurance. Insurance coverage shall meet statutory minimums and shall include a Waiver of Subrogation in favor of the TA.
- ii. Commercial General Liability Insurance. The limit for Commercial General Liability Insurance in each contract and subcontract shall not be less than \$1 million. Commercial General Liability Insurance shall be primary to any other insurance, name the TA as an Additional Insured, include a Separation of Interests endorsement and include a Waiver of Subrogation in favor of the TA.
- iii. Business Automobile Liability Insurance. The limit for Business Automobile Liability Insurance in each contract and subcontract shall not be less than \$1 million. Insurance shall cover all owned, non-owned and hired autos; and shall include a Waiver of Subrogation in favor of the TA.
- iv. Property Insurance. Property Insurance shall cover the Entity's and/or Agent's own equipment as well as any materials to be installed. Property Insurance shall include a Waiver of Subrogation in favor of the TA.
- v. Professional Liability Insurance. If deemed appropriate by the SPONSOR or the Entity in consideration of the work required for the Project, insurance should cover the Entity's and any Agent's professional work on the Project. The limit for Professional Liability Insurance in each appropriate contract and subcontract should not be less than \$1 million.
- vi. Contractors' Pollution Liability Insurance and/or Environmental Liability Insurance. If deemed appropriate by SPONSOR or the Entity in consideration of the work required for the Project, insurance should cover potential pollution or environmental contamination or accidents. The limit for Pollution and/or Environmental Liability Insurance in each appropriate contract and subcontract should not be less than \$1 million. Such insurance shall name the TA as an Additional Insured and include a Waiver of Subrogation in favor of the TA.
- vii. Railroad Protective Liability Insurance. Insurance shall be procured if the Project will include any construction or demolition work within 50 feet of railroad tracks. The limit for Railroad Protective Liability Insurance in each appropriate contract and subcontract shall not be less than \$2 million per occurrence and \$6 million annual aggregate.

- b) Excess or Umbrella Coverage. SPONSOR and/or the Entity may opt to procure excess or umbrella coverage to meet the above requirements, but in such case, these policies shall also satisfy all specified endorsements and stipulations for the underlying coverage's, and shall include provisions that the Entity 's insurance is to be primary without any right of contribution from the TA.
- c) Deductibles and Retentions. SPONSOR shall ensure that deductibles or retentions on any of the above insurance policies are paid without right of contribution from the TA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the named insured is unacceptable.

In the event that any policy contains a deductible or self-insured retention, and in the event that the TA seeks coverage under such policy as an additional insured, SPONSOR shall ensure that SPONSOR and/or the Entity satisfies such deductible to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Entity or Agents, even if neither the Entity nor Agents are named defendants in the lawsuit.

- d) Claims Made Coverage. If any insurance specified above shall be provided on a claim-made basis, then in addition to coverage requirements above, such policy shall provide that:
- i. Policy retroactive date coincides with or precedes the Entity's start of work (including subsequent policies purchased as renewals or replacements).
 - ii. Entity shall make every effort to maintain similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insured.
 - iii. If insurance is terminated for any reason, Entity agrees to purchase an extended reporting provision of at least three (3) years to report claims arising from work performed in connection with this Agreement.
 - iv. Policy allows for reporting of circumstances or incidents that might give rise to future claims.
- e) Failure to Procure Adequate Insurance. Failure by SPONSOR and/or the Entity to procure sufficient insurance to financially support Section 4.1, Indemnity by SPONSOR, of this Agreement does not excuse SPONSOR from meeting all obligations of Section 4.1 and the remainder of this Agreement, generally.

Prior to beginning work under this Agreement, SPONSOR shall obtain, and produce upon request of the TA, satisfactory evidence of compliance with the insurance requirements of this section.

SECTION 5: Miscellaneous

5.1 Notices. All notices required or permitted to be given under this Agreement, excluding progress reports, the final report, and invoices, shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either party may designate in written notice to the other. Notices shall be deemed received upon delivery if personally served, one (1) business day after mailing if delivered via overnight courier, or two (2) business days after mailing if mailed as provided above.

To TA: San Mateo County Transportation Authority
1250 San Carlos Avenue
P.O. Box 3006
San Carlos, CA 94070-1306
Attn: Michael Scanlon
Executive Director

To SPONSOR: City of Brisbane
50 Park Place
Brisbane, CA 94005
Attn: Randy Breault
Director of Public Works/City Engineer

5.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either party shall be implied from any omission by either party to take action on account of such default if such default persists or is repeated. No express waiver shall affect any default not specified in the waiver, and the waiver shall be operative only for the time or extent stated. The consent or approval by either party to or of any act by either party requiring further consent or approval shall not be deemed to waive or render unnecessary consent or approval to any subsequent, similar acts.

5.3 Assignment. No party shall assign, transfer or otherwise substitute its interest or obligations under this Agreement without the written consent of the other party.

5.4 Governing Law. This Agreement shall be governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

5.5 Compliance with Laws. In performance of this Agreement, the parties shall comply with all applicable Federal, State and local laws, regulations and ordinances.

5.6 Modifications. This Agreement may only be modified in writing executed by both parties.

5.7 Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in said proceedings shall be entitled to its costs, including reasonable attorneys' fees, in addition to such other remedies to which it may be entitled.

5.8 Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractors and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of Independent Contractor.

5.9 Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for, in the process of being assembled or prepared by or for, or furnished to SPONSOR under this Agreement shall be the joint property of the TA and the SPONSOR, and shall not be destroyed without the prior written consent of the TA. The TA shall be entitled to copies and access to these materials during the progress of the Project and upon completion or termination of the Project or this Agreement. SPONSOR may retain a copy of all material produced under this Agreement for its use in its general activities. This Section 5.8 does not preclude additional shared ownership of work with other entities under contract with the SPONSOR for funding of the Project.

5.10 Non-discrimination. SPONSOR and any contractors performing services on behalf of SPONSOR shall not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status, or in any manner prohibited by federal, state or local laws.

5.11 Accessibility of Services to Persons with Disabilities. The Project shall be implemented in compliance with, and in a manner that does not subject the TA or SPONSOR to liability under, the Americans with Disabilities Act, the California Disabled Persons Act, or any other state or federal laws protecting the rights of persons with disabilities.

5.12 Warranty of Authority to Execute Agreement. Each party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a party to this Agreement.

5.13 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

5.14 Counterparts. This Agreement may be executed in counterparts, each of which may be deemed an original, but both of which together shall be deemed a single Agreement.

5.15 Attribution to the TA. SPONSOR must include attribution that indicates work was funded with Measure A Funding from the TA. This provision applies to any project, or publication, that was funded in part or in whole by Measure A funds. Acceptable forms of attribution include TA branding on Project-related documents, construction signs, public information materials, and any other applicable documents.

5.16 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

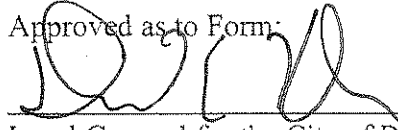
CITY OF BRISBANE

By: _____

Name: _____

Its: _____

Approved as to Form:



Legal Counsel for the City of Brisbane

**SAN MATEO COUNTY TRANSPORTATION
AUTHORITY**

By: _____

Name: Michael J. Scanlon

Its: Executive Director

Approved as to Form:

Legal Counsel for the TA

Attest:

TA Secretary

Exhibit A: Scope of Work Information

Exhibit B: Progress Reporting Template

Exhibit C: Permissible Costs for Reimbursement

Exhibit D: Reimbursement Claim Form

EXHIBIT A: SCOPE OF WORK INFORMATION

US101/Candlestick Interchange Project Supplemental Technical Studies

Sponsoring Agency: *City of Brisbane*

Contact: *Randy Breault*
Director of Public Works/City Engineer
Director of Emergency Services
50 Park Place
Brisbane, CA 94005-1310
415.508.2131

Implementing Agency: *City of Brisbane*

Contact: *Karen Kinser*
Senior Civil Engineer
50 Park Place
Brisbane, CA 94005-1310
415.508.2130

Overall Project Description:

US101/Candlestick Interchange Project

The City of Brisbane proposes to modify and reconstruct the Route 101/Candlestick Point Interchange (Interchange Project), which would improve traffic operations and regional access to and from the freeway. The Project is currently included in the Metropolitan Transportation Commission's Transportation 2035 Plan and San Mateo County's Measure A Expenditure Plan. Furthermore, the Bi-County Transportation Study (a decade-long joint effort by the City and County of San Francisco agencies and San Mateo County agencies) also analyzed the Project to coordinate the accomplishment of regional objectives.

The project limits straddle the county lines of San Francisco County and San Mateo County. Adjacent to the freeway to the northeast is the San Francisco Executive Park, owned by the Universal Paragon Corporation (UPC) and consisting of commercial development and medium density residential properties. Also northeast of the project limits is Candlestick Point State Recreation Area and the Candlestick Point / Hunter's Point Shipyard Project in the City and County of San Francisco, consisting of parks, retail, commercial, medium to high density residential, and research and development facilities. To the southeast of the project limits is San Francisco Bay. To the northwest of the project limits are the garbage and recycling facilities for

Recology (formerly known as Norcal Waste Systems, Inc.). To the southwest of the project limits is undeveloped property also owned by UPC. This property, known as the Brisbane Baylands, encompasses approximately 684 acres, and is presently completing an EIR studying the development of parks, retail, commercial office space, research and development facilities, renewable energy generation, a hotel/convention center, and residential properties. The Geneva Ave Extension would bisect the Brisbane Baylands Project and extend the proposed Geneva Ave east from Bayshore Blvd, crossing over the Joint Powers Board (JPB)/Caltrain corridor, to the proposed Interchange upgrade. The Geneva Ave Extension is expected to cross adjacent to the existing JPB/Caltrain Bayshore Station.

The City is currently in the process of finalizing the Project Study Report (PSR) with Caltrans for the Interchange Project. The PSR considers two viable build alternatives. The Interchange Project also proposes to extend Geneva Avenue from its current eastern terminus at Bayshore Boulevard to cross either under or over Route 101 (depending on the alternative) and connect with Harney Way. The existing ramps to and from Harney Way on northbound (NB) Route 101 would be removed, and a compact diamond interchange at Route 101 and the extension of Geneva Avenue would be constructed. Geneva Avenue would be constructed as a six-lane local road with Class II bike lanes and sidewalks in both directions. Exclusive lanes for a Bus Rapid Transit (BRT) facility would be provided on the westbound (WB) approach of Harney Way, then would use the existing alignment of Alana Way and continue on Geneva Avenue west of Route 101. The BRT is planned to connect the planned developments to critical intermodal transit facilities, including the JPB/Caltrain Bayshore Station and Balboa BART station in the City of Daly City.

Measure A Funded Scope of Work:

US101/Candlestick Interchange Project Supplemental Technical Studies

In conjunction with the Candlestick Interchange PSR, many of the adjacent projects have advanced, revised, or extended their project developments beyond their originally studied impacts to the overall report. So as to be able to prepare and finalize the PSR for the overall project, revisions to the surrounding project areas after initiation of the PSR were not considered or included in the PID funding document. These impacts may have minor to potentially significant impacts to the overall project and need to be considered to validate and inform the current PSR document, prior to the next phase of the Interchange's project development.

Many of these developments may directly impact the project limits and geometrics of both the Interchange and the Geneva Avenue Extension. While some of these projects are reviewing possible impacts and revisions to the Interchange and Geneva Extension projects, and while they mention the other potentially impacting projects, they are not reviewing impacts in relation to each other - in combination or in part. As these adjacent projects may impact the overall configuration and geometry of the Geneva Avenue Extension project as it

connects to the Candlestick Interchange, there are variations that need to be reviewed to complement and inform the Candlestick Interchange project development.

These adjacent project impacts and interfaces need to be studied, coordinated, integrated and planned to understand the overall impacts to the proposed interchange configuration through an overall planning study to validate and inform the project, the PSR, and any further project studies.

DESCRIPTION OF TASKS

In accordance with the project Scope outlined above, the following consultant services have been identified:

Geneva Ave Extension Project Interface Coordination

- Data Collection
- Project Impact Review
- Adjacent Project Coordination
- Identify Potential Constructibility Issues
- Identify Contract/Construction Staging Impacts
- Develop Geometric Impact Assessment

Geneva Avenue Extension Project Interface Study

- Prepare Draft Study Report
- Prepare Final Study Report

Scope of Work Schedule

	Begin	End
Planning	10/2013	3/2015
Environmental	N/A	N/A
Design	N/A	N/A
Right-of-Way	N/A	N/A
Construction	N/A	N/A

Scope of Work Budget/ Source of Funding:

Include funding plan for scope of work defined above, including use of TA staff and/or consultant support if applicable.

Task/Activity	Measure A Funding Amount	Other Sources*		Total
		List Fund Source	Amount	
Planning	\$400,000			\$400,000
TA Support (if applicable)				
Total:	\$400,000		\$0	\$400,000

* The other fund sources are provided for information purposes.

Cash Flow Projection for Measure A funds only

The cash flow projection is provided for informational purposes only.

Task/Activity	FY12				Subtotal FY12	FY13				Subtotal FY13
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)		1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)	
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cumulative to Date	\$0	\$0	\$0	\$0	Correct	\$0	\$0	\$0	\$0	Correct

Task/Activity	FY14				Subtotal FY14	FY15	FY16	FY17	Subtotal for FY15-FY17	Project Total
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)						
Preliminary Planning		\$150,000	\$100,000	\$100,000	\$350,000	\$50,000			\$50,000	\$400,000
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
Total		\$150,000	\$100,000	\$100,000	\$350,000	\$50,000	\$0	\$0	\$50,000	\$400,000
Cumulative to Date	\$0	\$150,000	\$250,000	\$350,000	Correct	\$400,000	\$0	\$0	Correct	Correct

Operating Responsibility: N/A

Maintenance Responsibility: N/A

Scope of Work Implementation Responsibility: *City of Brisbane*

Scope of Work Oversight Responsibility: *City of Brisbane/Caltrans*

EXHIBIT B: PROGRESS REPORTING TEMPLATE

REPORTING PERIOD: FROM mm/dd/yyyy TO mm/dd/yyyy

SMCTA Project # 00XXX – [Project Title/Phases]
[Carryover to additional pages as necessary]

Contact: [Name, Title, Phone, email, address]

1) Scope:

[Describe scope of work here; specify project limits, phases of project. Identify the Measure A funded components]

Status Summary: [Provide Status]

Issues: [List any issues, i.e. potential scope changes]

2) Schedule:

Major Milestones:

	Original Baseline		Current Baseline		Current Forecast	
	Start	Finish	Start	Finish	Start	Finish
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY
[Activity]	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY	MM/DD/YY

Progress This Period:

[Describe progress and activities]

Measure A Funds Expended This Period: \$

Future Activities, Next Three Periods:

[Describe planned future activities]

Projected Measure A Funds Expenditure Next Three Periods: \$

Issues: [List any issues, such as impacts to schedule]

3) SCOPE OF WORK Total Budget:

	A	B	C	D	E	F
Phase/Activity	Original Budget (per Funding Agreement)	Updated Cost Estimate	Total Change from Approved (B-A)	Total Expended to Date	% of Revised Budget Expended (D/B)	% of Work Completed
			-		0.00%	0.00%
			-		0.00%	0.00%
			-		0.00%	0.00%
Total Project	-	-	-	-	# DIV/0!	

4) SCOPE OF WORK Measure A Budget:

	A	B	C	D	E	F
Phase/Activity	Original Measure A allocation (per Funding Agreement)	Current Measure A allocation	Change in Measure A allocation from Approved/Funding Agmt (B-A)	Total Measure A Expended to date	% of current Measure A allocation expended (D/B)	% of Work Completed
					#DIV/0!	
					#DIV/0!	
					#DIV/0!	
<i>Total Scope of Work</i>	\$0	\$0	\$0	\$0	#DIV/0!	

Issues: [List any issues, i.e. potential cost increases]

5) Funding: [List additional sources as needed, Fill out the following matrix for each phase for the SCOPE OF WORK. i.e. environmental, design, etc.]

	Original	Original %	Current	Current %	Estimated at Completion	EAC %
	Contribution		Contribution		Contribution	
SMCTA		#DIV/0!		#DIV/0!		#DIV/0!
Others:						
Federal (specify)		#DIV/0!		#DIV/0!		#DIV/0!
State (specify)						#DIV/0!
Other (specify)						
Total	-	#DIV/0!	-	#DIV/0!	-	#DIV/0!

Issues: [List any issues such as changes in non-Measure A funding]

Submit Progress Reports To: xxxxx@samtrans.com or
 SMCTA
 Planning & Development
 1250 San Carlos Avenue
 San Carlos, CA 94070

Exhibit C

Definitions of Eligible Costs for Reimbursement

Project Initiation Documents (PID) - activities necessary to complete PIDs covered under the SCOPE OF WORK.

Environmental Studies – environmental studies costs, including determination of the appropriate environmental document, preparation of all preliminary engineering for each alternative, including geomantic layouts, determination of right-of-way needs, environmental technical studies (such as air, noise, energy, cultural resources and hazardous waste), and all other studies or activities necessary to prepare and finalize the appropriate documents for project and environmental approval.

Design – design activities such as preparation of design studies; materials and foundation reports; drainage, hydrology and hydraulic reports; surveying and mapping; preparation of the plans, specifications and estimate; preparation of bid documents and project files; preparation of permit applications and maintenance agreements; coordination of agency reviews and any other activities necessary to prepare final plans specifications and estimate (PS&E) for bid advertisement and award; and management oversight of these tasks except as limited in Section 2.2 (b) of the Agreement.

Right-of-Way Acquisition – all activities related to right-of-way including determination of right-of-way needs; title searches; preparation of appraisal maps, legal descriptions and plat maps; parcel appraisals and appraisal reviews; hazardous materials-testing and analysis; preparation of right-of-way acquisition documents; activities involved with acquiring rights-of-way including negotiation with property owners and cost associated with condemnation proceedings (including legal costs, expert witness costs, etc., but not including costs related to claims for inverse condemnation), right-of-way capital costs and cost-to-cure impacts related to the acquisition. To the extent allowed by law, sponsor shall undertake all best efforts so that cleanup of existing hazardous materials shall remain the liability of the property owner.

Services provided for right-of-way activities involved with property not necessary for the Measure A Highway Program-funded project as defined in the SCOPE OF WORK, and the associated costs for all such property, shall be at the sole expense of the sponsor.

Any property not used for construction of the Project, or used for any purpose other than construction of the Project as defined in the SCOPE OF WORK, should be identified and the funding agencies should be informed. Any excess right-of-way shall be identified as early as possible in the project design process and sold. The proceeds from the sale of such property shall be returned to the funding agencies, prorated based on the percentage of funds each agency contributed to the purchase of the property.

Construction – construction expenditures for the project (construction capital, management and inspection, surveys, public outreach, and related activities) that are part of the SCOPE OF WORK agreed to by the TA. Proposed contract change orders that may arise once a contract has been awarded will be reviewed on a case-by-case basis by the TA for approval to be reimbursed with Measure A funds. TA will require written approval of change orders over \$50,000 unless the TA Board has previously approved otherwise.

In addition, Measure A funds are eligible for reimbursement of SPONSOR's Project management oversight expenses associated with the construction of the Project. This would include activities such as construction management inspection, expenses associated with reviewing proposed change orders, and activities involved with submitting final costs to the appropriate agencies to secure other leveraged funds. Expenditure of Measure A funds remains subject to the limits set forth in Section 2.2 (b) of the Agreement.

The sponsor may include additional work beyond the SCOPE OF WORK for the Project at its own expense. The TA will require these costs to be segregated from the other item work expenses and paid for with non-Measure A Highway Program funds.

Miscellaneous – fees from other agencies, including permit fees or reimbursement for review or oversight costs needed for the project are eligible costs. However, the cost of permits or fees from the project Sponsor will not be eligible. Utility relocation costs are eligible for reimbursement according to previous agreements establishing rights for those utilities. The costs for specialized equipment for testing, analysis or production of documents for project-related work are also eligible.

Exhibit D San Mateo County Measure A Funds

SMCTA Project ID:
 SMCTA Project Allocation:
 Claim Date:
 Claim Number:
 Claim Period:
 Claim Amount: \$0.00

Consultant/Contractor/ Vendor	Invoice #	Invoice Total	Fund Source1	Funding Source		Measure A	% of Ttl	Prior Total Measure A \$	Life to Date Measure A \$	Measure A	
				% of Ttl	Fund Source2					Budget	Balance
				#DIV/0!			#DIV/0!				
				#DIV/0!			#DIV/0!				
				#DIV/0!			#DIV/0!				
				#DIV/0!			#DIV/0!				
Total				#DIV/0!			#DIV/0!				

Quarterly Progress Report included? Y/N

Please issue check payable to: Agency
 Contact person
 Address

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, dated _____, is made by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and BIGGS CARDOSA ASSOCIATES, INC., a California corporation ("Consultant").

RECITALS

A. City desires to retain Consultant for the performance of certain professional engineering services for completion of Supplemental Technical Studies for the 101/Candlestick Point Interchange Project ("the Project").

B. Consultant represents that Consultant is specially trained, experienced, and qualified to provide such professional services and is willing to do so pursuant to the terms and conditions of this Agreement.

AGREEMENT

1. **Scope of Services.** Subject to the direction and approval of City through its staff that City may provide from time to time, Consultant shall perform the services described in Exhibit A attached hereto and incorporated herein by reference. All services shall be performed to the reasonable satisfaction of the City department head in charge of the Project. All plans, specifications, estimates, and engineering data furnished by Consultant to City shall be signed by the responsible engineer, with registration number indicated where appropriate.

2. **Time of Performance.** The services of Consultant shall commence upon the issuance by City of a Notice to Proceed and shall be satisfactorily completed in accordance with the time schedule set forth in Exhibit B attached hereto and incorporated herein by reference, unless subject to delays beyond the reasonable control of Consultant.

3. **Responsible Personnel.** The personnel acting on behalf of Consultant primarily responsible for performance of the services hereunder shall be Roy Schnabel.

4. **Compensation.** As compensation for all services to be performed by Consultant under this Agreement, Consultant shall be paid the amounts set forth in Exhibit C attached hereto and incorporated herein by reference. The lump sum amounts set forth in Exhibit A include salary, fringe benefits, overhead, profit, and other expenses to be incurred by Consultant. In no event shall Consultant's total compensation exceed the sum of \$400,000 without additional written authorization from City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to City at the time of payment.

5. **Method of Payment.** Consultant shall submit billings to City describing in detail the work performed for which payment is requested, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable

expenditures. Billings shall be submitted in accordance with the stages of work described in Exhibit C attached hereto, or at such other time as agreed upon between City and Consultant. City shall pay Consultant no later than 30 days after approval of the invoice by City staff. If City objects to all or any portion of the billing, City shall notify Consultant of the nature of such objection and the amount in dispute. City shall pay when due the portion of the billing, if any, that is not in dispute. The parties will make a good faith effort to settle the disputed billing through good faith negotiations.

6. **Maintenance and Inspection of Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, time cards, and other records or documents relating to charges for services or expenditures charged to City, for a minimum of three (3) years from the date of final payment to Consultant under this Agreement and shall make the same available to City or its authorized representatives for inspection and audit, at any time during regular business hours, upon written request by City. Consultant shall also make such records and documents available for inspection and audit upon request by any representatives of the State or Federal government. The right of inspection shall include the right to make extracts and copies.

7. **Assignment and Subcontracts.** Consultant acknowledges that Consultant's special skill and expertise is a material consideration for City entering into this Agreement. Consultant shall not assign, subcontract or delegate to any other party the performance of any services to be rendered by Consultant under this Agreement without the prior written approval of City. If City consents to any subcontracting of work, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Each subcontractor must agree in writing to comply with all of the applicable terms and conditions of this Agreement.

8. **Correction of Work.** Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, goods, services, or other work, without additional cost to City. The performance or acceptance of services furnished by Consultant shall not relieve Consultant from the obligation to correct subsequently discovered defective, inaccurate, or incomplete performance of Consultant's services hereunder.

9. **Ownership of Documents.** All plans, studies, documents and other writings prepared by and for Consultant in the course of performing its services under this Agreement, except working notes and internal documents, shall become the property of City upon payment to Consultant for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon written request. Consultant shall not be responsible for any reuse of such documents by City which is unrelated to the Project and City agrees to indemnify, defend, and hold Consultant and its subcontractors harmless against any claims of liability arising from such reuse by City.

10. **Independent Contractor.** Consultant is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of City. As an independent contractor, neither Consultant nor any of its agents or employees shall be entitled to any salary, fringe benefits, worker's compensation, retirement contributions, sick leave,

insurance or other benefit or right connected with employment by City, or any compensation other than as provided in this Agreement. Consultant shall have no power or authority to bind City to any contract or otherwise to incur any obligation or liability for, or on behalf, or in the name of City.

11. **Licenses.** Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Consultant to practice its profession. Consultant shall, at its sole cost and expense, keep and maintain such licenses, permits, qualifications, insurance and approvals current and in full force and effect at all times during the term of this Agreement. Consultant shall maintain a current City of Brisbane business license.

12. **Compliance with Standards of Care and Laws.** Consultant shall adhere to the standard of care in its profession and shall comply with all applicable federal, state and local laws, codes, ordinances and regulations in connection with the performance of its services under this Agreement. Without limiting the generality of the foregoing, Consultant shall comply with the Federal Acquisition Regulations as set forth in CFR Title 48, Part 31 and CFR Title 49, Part 18, to the extent the same are applicable to the performance of Consultant's services under this Agreement.

13. **Errors and Omissions.** (Not Used)

14. **Indemnity.** Consultant shall indemnify, defend, and hold City, its officers, officials, agents, employees and volunteers, harmless from and against any and all claims, demands, causes of action, losses, damages, injuries, expenses and liabilities, direct or indirect, including reasonable attorney's fees, arising out of or in any manner relating to the negligent performance by Consultant or any of its subcontractors, agents or employees, of any services under this Agreement or the failure by Consultant or any of its subcontractors, agents or employees to comply with any of their obligations contained in this Agreement, and City shall not be liable for any acts or omissions of Consultant or any of its subcontractors, agents or employees.

15. **Insurance.** Consultant, at its own expense, shall procure and maintain, for the duration of this Agreement, insurance policies which satisfy the following requirements:

(a) Type of policies and coverage:

(1) *General Liability Coverage.* Consultant shall maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage, providing coverage at least as broad as Insurance Services Office Commercial General Liability form CG 0001 (Ed. 11/88). If the form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

- (2) *Automobile Liability Coverage.* Consultant shall maintain automobile liability insurance in an amount not less than \$1,000,000 combined single limit for each occurrence, for bodily injury and property damage, providing coverage at least as broad as Insurance Services Office form CA 0001 (Ed. 12/90) Code 1 (any auto).
 - (3) *Workers' Compensation and Employer's Liability Coverage.* Consultant shall maintain workers' compensation insurance as required by the State of California and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, for any and all persons employed by Consultant in connection with the performance of services under this Agreement. In the alternative, Consultant may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Consultant for City.
 - (4) *Professional Liability Coverage.* Consultant shall maintain professional errors and omissions liability insurance in an amount not less than \$1,000,000 per claim and \$2,000,000 aggregate, covering negligent acts, errors or omissions which may be committed by Consultant in the performance of its services under this Agreement.
- (b) Endorsements: Each general liability and automobile liability insurance policy shall contain, or be endorsed to contain, the following provisions:
- (1) The City, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents or volunteers.
 - (2) For any claims related to the Project, Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it.
 - (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees, agents or volunteers.

- (4) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Consultant's insurance coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to by the carrier City. Consultant shall immediately give written notice to City of any suspension or reduction in coverage or limits.
- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions exceeding \$50,000 must be declared to and approved by City. At City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- (d) Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII, unless otherwise approved by City in writing.
- (e) Verification of coverage. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required by this Agreement. Certificates of such insurance shall be filed with City before commencement of work by Consultant. At the request of City, Consultant shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by this Agreement.

16. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, addressed to the other party as follows:

To City	City of Brisbane Attn: Director of Public Works/City Engineer 50 Park Lane Brisbane, CA 94005
---------	--

To Consultant	Biggs Cardosa Associates, Inc. Attn: Roy Schnabel 1871 The Alameda, Suite 200 San Jose, CA 95126-1752
---------------	--

17. **Resolution of Disputes; Litigation Expenses and Attorneys' Fees.** In the event of any dispute between the parties pertaining to this Agreement, the parties shall endeavor in good faith to resolve such dispute through mediation before the commencement of legal action by one party against the other. If either party to this Agreement commences any legal action against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

18. **Termination of Agreement.** This Agreement may be terminated immediately by either party, effective upon written notice, should the other party commit any material default in the performance of its obligations hereunder. This Agreement may also be terminated by either party, for any reason, upon fifteen (15) day's prior written notice to the other party. In the event this Agreement is terminated by City through no fault of Consultant, Consultant shall be compensated for all services performed to the date of termination.

19. **Equal Opportunity Employment.** Consultant warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment.

20. **Miscellaneous Provisions.**

- (a) Severability. Should any portion of this Agreement be declared void or unenforceable in a final decision by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be reasonably interpreted to implement the intention of the parties.
- (b) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal.
- (c) Amendments. This Agreement may be modified or amended only by a written document duly executed by both City and Consultant.
- (d) Waiver. The waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same provision or any other provision of this Agreement.
- (e) Execution. Each party warrants that the individuals signing this Agreement on its behalf have the legal power and authority to do so and to bind the party to this Agreement.
- (f) Successors and Assigns. Subject to the restriction against assignment and subcontracting, this Agreement shall be inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

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


THE CITY OF BRISBANE

By: _____
Raymond C. Miller, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:



David E. Kahn, City Attorney

CONSULTANT:

Typed Name, Title

**BIGGS CARDOSA
ASSOCIATES INC**
STRUCTURAL ENGINEERS

885 The Alameda
San Jose, CA 95126-3133
Telephone 408-296-5515
Facsimile 408-296-8114

September 17, 2013

City of Brisbane
50 Park Lane
Brisbane, CA 94005

Attention: Karen Kinser

Subject: 101/Candlestick Interchange Supplemental Technical Studies
Additional Service Request – #03

Dear Ms. Kinser:

Based on our discussions, Biggs Cardosa Associates, Inc. (BCA) is submitting the following proposal to provide additional engineering services for the subject Project. This proposal is in addition to the scope provided previously.

PROJECT SCOPE

In conjunction with the Candlestick Interchange PSR, many of the adjacent projects have advanced, revised or extended their project developments beyond their originally studied impacts to the overall report. As not to affect the continued conclusion of the PSR, additional revisions to the surrounding project areas were not considered or included in the PID funding document. These impacts may have minor to potentially significant impacts to the overall project and need to be considered to validate and inform the current PSR document that is being finalized.

Many of these developments will directly impact the project limits and the Geneva Avenue Extension, in particular. While some of these projects are reviewing possible impacts and revisions to the Interchange and Extension project and while they mention the other potential effecting projects, they are not reviewing impacts in relation to each other - in combination or in part. As these adjacent projects may impact the overall configuration and geometry of the Geneva Avenue Extension project as it connects to the Candlestick Interchange, there are variations that need to be reviewed to complement and inform the Candlestick Interchange PID.

Following is a summary of the major study projects that are and/or are impacting the Geneva Extension alignment and their associated impact to the overall project:

Brisbane Baylands Project: The 684-acre Baylands area, which once was formerly used for industrial and landfill purposes, is one of the largest undeveloped locations on the west San Francisco Bay Peninsula. Owned by UPC and partially occupied by light industrial uses, the City of Brisbane is evaluating alternative development proposals consisting of residential and commercial developments, including offices, hotels, and entertainment facilities.

- Land Use Revisions/Options need to be reviewed and validated
- Revised Geometry and Traffic Demands
- Potential Circulation Network
- Additional Access Points Required
 - Various land use alternative options
 - Direct Connectors and ramps
 - Elevated Tunnel Ave

Recology Expansion Project: Recology owns and operates the City's solid waste transfer facility. It has proposed to expand the facility to include 25 acres of the Brisbane Baylands south of the existing Recology parcels, increasing the developed area of the facility from 259,000 square feet to approximately 1 million square feet. Developments include office space, maintenance and parking areas, and construction/realignment of roads, utilities, and other infrastructure.

- Looking to potentially occupy both sides of Geneva Avenue
- Possible realignment of Geneva Avenue to accommodate expansion on one side
- Ingress/Egress to site
- Relocation of Beatty Ave and Tunnel Ave

Bus Rapid Transit (BRT): SFTA is requires a large modal contribution from mass transit particularly from the intermodal facilities to the CP/HPS project. Much of this mode shift is accomplished via BRT through the Geneva corridor and light rail via Third St LRT. The BRT will extend from the development through to the intermodal facilities located at Bayshore Station and Geneva Ave BART Station. It is suggested that the BRT will be one of the initial projects to be implemented of the major project impacts listed here. As a result, it may not only be a project impact but a future project constraint with regards to constructability and traffic staging.

- Dedicated BRT lanes through Harney St and Geneva Ave
- BRT Braiding and intermediate Station locations
- Alignment Options westerly of freeway
- BRT Staging during construction

Bayshore Intermodal Station Access: Bayshore Intermodal Station is a currently underutilized Caltrain station that has been identified as a Priority Development Area due to the recognition of the site's large potential role in meeting the transportation demands of the planned future developments of the Brisbane Baylands, the Schlage Lock site, Executive Park, and Candlestick/Hunter's Point.

- Reconfiguration of BRT alignment, including new access point onto Geneva Avenue
- Pedestrian friendly design of Geneva Avenue
 - Lower design speed of traffic at specific locations
 - Strong pedestrian crossings/access
 - At-grade crossings, and
 - Crossings under elevated structures
 - Special traffic control signals
- Strong bicycle access along Geneva
- Multi-use path along Tunnel Avenue

Executive Park Project: Redevelopment of the portion of Executive Park currently occupied by three office buildings and parking lots into a pedestrian-oriented, urban residential neighborhood. Redevelopment will include new streets and block patterns.

- Land Use Revisions
- Additional/revised access points
 - Reconfiguration of Thomas Mellon Circle to meet Harney Way at a right angle
 - New street intersection at Harney Way
 - Right-of Way Impacts at Executive Park Blvd

Cow Palace/East Daly City Projects: Several sites in East Daly City, including Cow Palace, the Carter-Martin site, and the PG&E/Midway Village site, have been identified for potential redevelopment, but no plans have yet been formally proposed.

Baby Bullet and CA High Speed Rail (HSR): Possible stop and connection to both the Baby Bullet and CA HSR may provide augmented rail service to the Baylands.

- HSR Fast Start Project concept (not yet implemented, but likely) utilizes the existing Caltrain right-of-way and the existing tracks, and no further impact would need to be considered
 - Future HSR design through Bayshore area is not likely to be clarified in the foreseeable future, and modifications to Caltrain right-of-way would need to be designed subsequently

These adjacent project impacts and interfaces need to be studied, coordinated, integrated and planned to understand the overall impacts to the proposed interchange configuration through an overall planning study to validate and inform the project, the PSR, and any further project studies.

DESCRIPTION OF ADDITIONAL CONSULTANT SERVICES

The overall scope and the following discrete task orders to be issued will be consistent with the Measure A Call for Projects Application submitted June 2012, and the clarifications provided to SMCTA staff August 2012. In accordance with the project Scope noted above, the following additional consultant services have been identified:

General Scope – 101/Candlestick Interchange Supplemental Technical Studies

- Data Collection
- Project Interface and Coordination Meetings
- Project Impact Review
- Adjacent Project Coordination
- Identify Potential Constructibility Issues
- Identify Contract/Construction Staging Impacts
- Develop Geometric Impact Assessment
- Prepare Draft Study Report
- Prepare Final Study Report

General Task Order Breakdowns

- Task Order 1 – Geneva/Harney Interchange and Geneva Extension
- Task Order 2 – Baylands
- Task Order 3 – Recology
- Task Order 4 – BRT/Intermodal Station

The General Task Orders will be broken into associated subtasks based on requested interface resolution and coordination for approval of discreet TO budgets. These subtasks will be as requested by the City and a subtask proposal will be submitted for approval of specific budgets.

Miscellaneous items will be included within Task Order 1 budget or tasked within that specific general task order. This may include study items such as bike and pedestrian circulation concerns; and construction/project staging and phasing as defined and discussed examples.

ASSUMPTIONS

The following assumptions were made in the preparation of this Additional Service Request:

- Plans and details shall be drafted using AutoCAD version 2009.
- The project will be prepared in accordance with Caltrans standards.

- Cost recommendations will consist of estimated, planning level costs based on readily available industry standards and recent project experience
- The referenced draft and final Study Reports represent updates to the previously prepared reports and exhibits.
- Additional services are limited to the scope and projects described above. Incorporation of additional studies or projects not defined above can be provided as Extra Work.
- Agency reviews will be limited to one round of review comments based on the draft Study Report. Review comments will be compiled into one Review Comment Letter with attached redline comments of drawings and exhibits as applicable.

Biggs Cardosa Associates, Inc. proposes to provide the additional engineering scope of services outlined in this proposal for a fixed fee of \$400,000 including expenses (see Summary of Fees and Hours attached).

General Task Order Cost Breakdown

Task Order 1 - \$200k
Task Order 2 - \$100k
Task Order 3 - \$75k
Task Order 4 - \$25k

For budgeting purposes the following will be established as preliminary breakdowns. Budgets can be shuffled as required by the City to accommodate desired subtasks.

Sincerely,

BIGGS CARDOSA
ASSOCIATES, INC.



Roy M. Schnabel
Principal

Attachments: Summary of Fees and Hours

Task/Activity	FY12				Subtotal FY12	FY13				Subtotal FY13
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)		1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)	
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
					\$0					\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Cumulative to Date	\$0	\$0	\$0	\$0	Correct	\$0	\$0	\$0	\$0	Correct

Task/Activity	FY14				Subtotal FY14	FY15	FY16	FY17	Subtotal for FY15-FY17	Project Total
	1st Quarter (Jul 1-Sept 30)	2nd Quarter (Oct 1-Dec 31)	3rd Quarter (Jan 1-Mar 31)	4th Quarter (Apr 1-Jun 30)						
Preliminary Planning		\$150,000	\$100,000	\$100,000	\$350,000	\$50,000			\$50,000	\$400,000
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
					\$0				\$0	\$0
Total		\$150,000	\$100,000	\$100,000	\$350,000	\$50,000	\$0	\$0	\$50,000	\$400,000
Cumulative to Date	\$0	\$150,000	\$250,000	\$350,000	Correct	\$400,000	\$0	\$0	Correct	Correct

Operating Responsibility: N/A

Maintenance Responsibility: N/A

Scope of Work Implementation Responsibility: *City of Brisbane*

Scope of Work Oversight Responsibility: *City of Brisbane/Caltrans*

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Measure A Highway Program Call for Projects, First Cycle

DATE: July 23, 2012

City Council Goals:

To maintain and improve infrastructure. (#3)

To promote intergovernmental opportunities that enhances services and/or reduces cost of operations and services to city residents. (#10)

Purpose:

To obtain Council's approval of the Resolution required by the San Mateo County Transportation Authority as a condition to receive transportation funding from the Measure A Highway Program Call for Projects First Cycle to complete a US 101/Candlestick Interchange Supplemental Technical Study.

Recommendation: Approve Resolution No. 2012-18.

Background:

The San Mateo County Transportation Authority (TA) is the Transportation Authority for the 20 cities and the county of San Mateo. In that capacity they are required to develop programs and guidelines for the distribution of Measure A Sales Tax funds for use on highway projects within the jurisdiction. One of the TA's guidelines requires that the attached resolution be adopted by the local agency before they are eligible to receive Measure A funds. This requirement to receive funds is in line with requirements for governing board resolutions committing to completion of proposed projects from federal, state and regional funding sources.

The US 101/Candlestick Interchange (Interchange Project) Supplemental Technical Study is necessary due to the multiple projects and proposed developments in the bi-county area (the northeastern portion of San Mateo County, at its border with the City & County of San Francisco) that will impact traffic. The Interchange Project together with the Geneva Avenue Extension are considered critical projects needed to address the future traffic impact issues. The City of Brisbane has previously sponsored and nearly completed the Project Study Report (PSR) for the Interchange Project, using funding provided by developer contributions. Staff considers it vital

to review the Interchange Project with respect to potential development impacts as currently understood, including the proposed Geneva Avenue Extension. This review is proposed to take the form of Supplemental Technical Studies to the PSR.

Both the Interchange Project and the Geneva Avenue Extension are included in the Metropolitan Transportation Commission's Transportation 2035 Plan and the San Mateo County's Measure A Expenditure Plan, the Bi-County Transportation Study, the City of Brisbane's General Plan, and numerous development areas' Environmental Impact Reports.

City staff has reviewed the scope of the project with the TA, and has obtained letters of support from both the San Francisco County Transportation Authority and the City of Daly City. The project application was due 6/29/12, and has been submitted.

The funding requested is for technical studies in the estimated amount of \$400,000.

Discussion:

If the recommended action is not taken, then the City will not be eligible for transportation related funds from the San Mateo County Transportation Authority Measure A Highway Program Call for Projects, First Cycle.

Fiscal Impact:

The direct cost to hire a consultant to complete the technical study would be funded by Measure A grant money.

Measure of Success

The TA's approval and funding of the US 101/Candlestick Interchange Supplemental Technical Study project.

Attachments:

1. Resolution No. 2012-18
2. City of Brisbane Measure A Highway Program Call for Projects Application



Senior Civil Engineer



Director of Public Works/City Engineer



City Manager

A copy of supporting materials provided to the City Manager and Council Persons in connection with this agenda item is available for public inspection and copying at 50 Park Place, City of Brisbane Department of Public Works, Brisbane, CA, 94005, Telephone: (415) 508-2130.