

4-18-23

**INTERAGENCY COOPERATION AGREEMENT
BETWEEN THE TRANSBAY JOINT POWERS AUTHORITY
AND THE CITY AND COUNTY OF SAN FRANCISCO
RELATING TO
PHASE 2 OF THE TRANSBAY PROGRAM**

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THIS INTERAGENCY COOPERATION AGREEMENT BETWEEN THE TRANSBAY JOINT POWERS AUTHORITY AND THE CITY AND COUNTY OF SAN FRANCISCO RELATING TO PHASE 2 OF THE TRANSBAY PROGRAM (“**Agreement**”), dated for reference purpose only as of _____, 2023, is made by and between the City and County of San Francisco, a municipal corporation (“**City**”), and the Transbay Joint Powers Authority, a joint exercise of powers authority (“**TJPA**”), each of which is referred to herein individually as a “**Party**” and jointly as the “**Parties**.”

RECITALS

This Agreement is made with regard to the following facts, intentions, and understandings:

- A. City is a municipal corporation organized and existing under the laws of the State of California.
- B. TJPA is a joint exercise of powers authority made up of City, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, and the California High Speed Rail Authority.
- C. In November 1999, San Francisco voters approved Proposition H, mandating that City extend the Caltrain commuter rail to downtown San Francisco in a new regional transit station on the site of the (then) existing Transbay Terminal and mandating that the new station serve high speed rail.
- D. TJPA is delivering the Transbay Program, a visionary transportation and housing project that has transformed downtown San Francisco and the San Francisco Bay Area’s regional transportation system by creating a world class transportation hub in the heart of a new neighborhood. The Transbay Program replaced the former Transbay Terminal at First and Mission Streets in San Francisco with a modern regional transit hub connecting the Bay Area and ultimately the State of California through: AC Transit, BART, Caltrain, Golden Gate Transit, Greyhound, Muni, SamTrans, WestCAT Lynx, Amtrak, Paratransit and future high speed rail from San Francisco to Los Angeles/Anaheim.
- E. TJPA has completed Phase 1 of the Transbay Program, construction of the Salesforce Transit Center. City consulted and cooperated with TJPA in aspects of the planning, design, construction, and financing of Phase 1, including through several intergovernmental agreements and memoranda of understanding between various City agencies and TJPA, and by agreeing to vacate and quitclaim to TJPA certain public right-of-way (airspace and subsurface) required for Phase 1, subject to the conditions set forth

in the City Board of Supervisors' approval of the right-of-way vacations and conveyances.

- F. TJPA is actively engaged in delivery of Phase 2 of the Transbay Program, the Downtown Rail Extension, now also known as "The Portal," referred to herein as the "**Project**" (defined in Section 2).
- G. The Project will be located on real property that is currently owned or controlled by various entities, including TJPA; the State of California; private parties; Caltrain; City; and City through the San Francisco Port Commission ("**Port**") pursuant to the Public Trust (defined in Section 2).
- H. Under California Public Resources Code section 5027.1, TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program. Nonetheless, the design, construction, and operation of the Project will affect property, improvements, programs, and services of City and, thus, TJPA requires certain permissions and approvals from City as the entity that owns and/or has the right to control such items. Moreover, as in Phase 1, TJPA would benefit from the consultation, cooperation, expertise, and experience of City in certain matters related to the planning, design, and construction of the Project.
- I. City desires to consult and cooperate with TJPA to facilitate the planning, design, and construction of the Project. The Project will bring direct and indirect benefits to City residents by providing improved regional and statewide rail connections to downtown San Francisco. Easier and more efficient transit options for commuters, tourists, and business travelers will support downtown San Francisco businesses and contribute to the economic revitalization of San Francisco at large and the neighborhoods surrounding the Project in particular. Connecting San Francisco to high speed rail, which is expected to reduce reliance on intrastate air travel, will contribute to the decarbonization of California's economy. City and TJPA desire to memorialize the interagency cooperation between the Parties in this Agreement.
- J. TJPA is seeking funding for the Project under the Federal Transit Administration ("**FTA**") Capital Investment Grants ("**CIG**") program. The CIG program provides funding for large transit project investments such as new and expanded rail service, including the New Starts program that funds new projects or extensions to existing fixed guideway systems with a total estimated capital cost of \$300 million or more. In December 2021, the FTA accepted the Project into the Project Development phase of the CIG program. As a condition of federal funding under the CIG program, FTA requires TJPA to complete all major third party agreements. This Agreement is intended to, among other things, satisfy this CIG program requirement.
- K. TJPA receives federal, state, and local funding, and all rights and obligations of the Parties contemplated in this Agreement, including TJPA reimbursement of certain City costs related to implementation of this Agreement, must meet certain federal, state, and local requirements. TJPA has sole responsibility to ensure that it has funds available to

reimburse City for all City Tasks requested by TJPA that City performs; any noncompliance with any funder's requirements will not relieve TJPA of its reimbursement or other obligations in this Agreement that are incurred with respect to reimbursement for work performed or liabilities incurred by City.

- L. Under the National Environmental Policy Act (“NEPA”) and the California Environmental Quality Act (“CEQA”), a final Environmental Impact Statement/Environmental Impact Report for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project (“EIS/EIR”) was prepared and certified in 2004. The FTA issued a Record of Decision (“ROD”) under NEPA for the Transbay Program in 2005. After the issuance of the 2005 ROD, TJPA identified modifications to the Transbay Program; from 2006 to 2011, TJPA prepared six addenda under CEQA. In 2010, the Federal Railroad Administration (“FRA”) conducted an environmental reevaluation in accordance with NEPA to assess the train box design to accommodate potential high speed rail service. The reevaluation analyzed construction of the Transit Center train box as defined by the Transbay Program. The FRA issued a ROD in 2010. In 2018, FTA, in cooperation with FRA and TJPA, issued a final Supplemental EIS/EIR (“SEIS/EIR”), examining changes to Phase 2 of the Transbay Program. In 2019, FTA issued an amended ROD. In 2023, TJPA adopted an addendum to the SEIS/EIR. Mitigation measures were identified in the 2004 EIS/EIR, and adopted and incorporated into the Transbay Program. The measures have been amended over time including most recently in 2023; the Mitigation Monitoring and Reporting Program is attached as Appendix C.
- M. TJPA and City, acting through its Office of Economic and Workforce Development (“OEWD”), previously entered that certain Memorandum of Understanding regarding the Downtown Rail Extension Project, dated as of January 1, 2022 (“OEWD MOU”), to provide a payment mechanism for TJPA to reimburse OEWD and other City agencies for staff time and materials expended on certain components of the Project in the interim period before this Agreement could be fully negotiated and presented to the appropriate bodies for their approval. This Agreement replaces the OEWD MOU in its entirety, except those terms of the OEWD MOU that expressly survive termination.
- N. The Project will be advanced over the course of several years, and TJPA and City expect the scope of services and work provided pursuant to this Agreement to change and adjust over time. TJPA and City intend for this Agreement to provide a flexible mechanism that will accommodate the evolving services and work that will be undertaken by City for the Project as it advances.
- O. On _____, by Resolution No. _____, City Board of Supervisors approved this Agreement. On _____, by Resolution No. _____, the TJPA Board of Directors approved this Agreement.

AGREEMENT

1. Affirmation Of Recitals

City and TJPA affirm that the above recitals are true and correct.

2. Definitions

As used in this Agreement (including all Appendices), the following words and phrases have the following meanings:

- (a) **“Acceptance”** and its corollaries means acceptance of a Modified City Improvement for ownership and responsibility for maintenance and liability by ordinance of City’s Board of Supervisors or as otherwise legally authorized if City has determined that Board of Supervisors action is not necessary.
- (b) **“Agents”** means the agents, employees, officers, directors, contractors, subcontractors, and representatives of the Party to which such term refers.
- (c) **“Annual Scope & Budget”** or **“ASB”** means an individual Appendix B subagreement with a City Agency attached to this Agreement or made a part of this Agreement in the future, including any new, amended or modified ASB. Each ASB will detail the specified City Agency’s anticipated scope of work and budget under this Agreement for a particular Fiscal Year. **“Annual Scopes & Budgets”** or **“ASBs”** means some or all of the individual Appendix B subagreements with City Agencies, as indicated by context.
- (d) **“Betterments”** are defined in Section 9(b)(5).
- (e) **“California Environmental Quality Act”** or **“CEQA”** is defined in Recital L.
- (f) **“Capital Investment Grants”** or **“CIG”** is defined in Recital J.
- (g) **“City”** means the City and County of San Francisco, a municipal corporation.
- (h) **“City Agency”** or **“City Agencies”** means City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and enter into an ASB pursuant to this Agreement. Nothing in this Agreement affects the jurisdiction, under City’s Charter or Municipal Code, of a City department that has not executed or consented to this Agreement and entered into an ASB. City actions and proceedings subject to this Agreement will be through the affected City Agency(ies) (and, when required by Law, the Board of Supervisors).
- (i) **“City Attorney”** means City’s Office of the City Attorney.
- (j) **“City Code”** means City’s Municipal Code, as may be amended, and the policies, rules, standards, procedures, and requirements of City Agencies that are uniformly applied in similar circumstances in implementing City’s Municipal Code, as such may be amended or updated from time to time.
- (k) **“City Improvements”** means street improvements (including roadways, curbs, gutters, and sidewalks), traffic control devices, storm drains, sanitary sewers, water lines, hydrants, electroliers, landscaping, irrigation systems, streetlights owned by City, signage, roadway striping, and all other public facilities, improvements, and appurtenances owned by City.

- (l) **“City Property”** means any real property interest located in San Francisco owned by City. The map attached as Exhibit 1 depicts the City Property which the Parties currently anticipate will be affected by the Project.
- (m) **“City ROW”** means the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, spaces, streets, and ways within San Francisco, or which are or will be under the permitting jurisdiction of PW, as well as any such right-of-way under the jurisdiction of the Port, SFMTA, or the Office of Community Investment and Infrastructure.
- (n) **“City Tasks”** means services and other work performed by City for the Project pursuant to an ASB.
- (o) **“Citywide Contingency Funds”** is defined in Section 8(f).
- (p) **“Claim”** is defined in Section 12(a).
- (q) **“Contract Monitoring Division”** or **“CMD”** is defined in Section 17(e)(4).
- (r) **“DBI”** means City’s Department of Building Inspection.
- (s) **“Default”** is defined in Section 14(b).
- (t) **“DT”** means City’s Department of Technology.
- (u) **“Effective Date”** is defined in Section 18(o).
- (v) **“Eligible Costs”** is defined in Section 8(a).
- (w) **“Environmental Impact Statement/Environmental Impact Report”** or **“EIS/EIR”** is defined in Recital L.
- (x) **“Federal Railroad Administration”** or **“FRA”** is defined in Recital L.
- (y) **“Federal Transit Administration”** or **“FTA”** is defined in Recital J.
- (z) **“Final Completion”** concerning a particular Modified City Improvement means that all work on the relevant Modified City Improvement has been fully and satisfactorily completed in accordance with the permits for and City Codes applicable to the Modified City Improvement and that all necessary documentation has been received and reviewed as determined by City.
- (aa) **“Fiscal Year”** is defined in Section 8(d).
- (bb) **“Impacted City Improvements”** means those existing City Improvements or City Property that require modification, temporary or permanent relocation, protection in place, removal, replacement, or repair as a result of the Project.
- (cc) **“Improvement Plans”** is defined in Section 10(b).
- (dd) **“Indemnitees”** is defined in Section 12(a).
- (ee) **“Law”** means all: (1) federal and state law, including any codes, statutes, rules, regulations, executive mandates, and court decisions (including any order, injunction or writ) thereunder; and (2) local law, including the City Code; as such may be amended or updated from time to time.
- (ff) **“Material Change”** is defined in Section 15(c).
- (gg) **“MMRP”** means the Mitigation Monitoring and Reporting Program for the Transbay Program, and amended most recently in 2023, attached as Appendix C.
- (hh) **“Modified City Improvements”** means: (1) the improvements to Impacted City Improvements, whether such Impacted City Improvements are permanently and/or temporarily relocated, temporarily removed, or protected in place, to resolve the Project’s impacts; and (2) related right-of-way improvements including surface and subsurface restoration.

- (ii) “**National Environmental Policy Act**” or “**NEPA**” is defined in Recital L.
- (jj) “**OEWD**” means City’s Office of Economic and Workforce Development.
- (kk) “**OEWD MOU**” is defined in Recital M.
- (ll) “**Party**” means City or TJPA, and “**Parties**” means City and TJPA jointly.
- (mm) “**Port**” means the San Francisco Port Commission.
- (nn) “**Project**” means Phase 2 of the Transbay Program, the Downtown Rail Extension, as described in the final EIS/EIR, and associated addenda and supplements, and as further detailed in Section 5.
- (oo) “**Project Improvements**” means all structures, features, and fixtures constructed or installed for the Project, including improvements related to relocation, replacement, protection, and restoration of street improvements, Utility Facilities as defined in Public Works Code Section 900(u), and pipelines within the right-of-way, grading, drainage, access to the right-of-way, preliminary and construction engineering, and any and/or all other work of every kind and character necessary to build the Project. The TJPA Improvements and Modified City Improvements are subsets of the Project Improvements.
- (pp) “**Proposed Scope & Budget**” is defined in Section 8(d).
- (qq) “**Public Trust**” means the common law public trust and the Burton Act statutory trust (Cal. Stats. 1968, Ch. 1333, as amended).
- (rr) “**PW**” means City’s Department of Public Works.
- (ss) “**Record of Decision**” or “**ROD**” is defined in Recital L.
- (tt) “**RED**” means City’s Real Estate Division.
- (uu) “**Repair**” is defined in Section 11(i)(3).
- (vv) “**SFFD**” means City’s Fire Department.
- (ww) “**SFMTA**” means City’s Municipal Transportation Agency.
- (xx) “**SFPUC**” means City’s Public Utilities Commission.
- (yy) “**Substantial Completion**” concerning a particular Modified City Improvement means the stage when the work on that Modified City Improvement is sufficiently complete in accordance with the applicable permits and City Codes and the Modified City Improvement is ready for its intended use.
- (zz) “**Supplemental Environmental Impact Statement/Environmental Impact Report**” or “**SEIS/EIR**” is defined in Recital L.
- (aaa) “**Term**” is defined in Section 3.
- (bbb) “**TJPA Improvements**” means the subset of Project Improvements that are not Modified City Improvements and that will be designed, installed, owned, operated, or maintained, by or on behalf of TJPA including rail infrastructure, stations, entrances, exits, ventilation, and appurtenances.
- (ccc) “**Transbay Joint Powers Authority**” or “**TJPA**” means a joint exercise of powers authority made up of City, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, and the California High Speed Rail Authority.
- (ddd) “**Urgent Work**” is defined in Section 11(c).

3. Term; Right To Stop Work

- (a) Term. The term of this Agreement (“**Term**”) will commence upon the Effective Date and end ten (10) years from the Effective Date unless (i) TJPA’s Executive Director at an earlier date notifies City that the Project is complete, (ii) the Parties agree to extend the Agreement for an additional five- (5) year term, subject to approval by City’s Board of Supervisors, or (iii) the Agreement is earlier terminated pursuant to its terms.
- (b) Right to Terminate Agreement. TJPA and City each will have the right to terminate this Agreement at any time and for any reason by providing at least ninety (90) days prior written notice of termination to the other Party. PW’s Director, following consultation with the City Attorney and concurrence from all City Agencies, is authorized to exercise City’s right to terminate under this Section.
- (c) City Agency Right to Suspend Work. Each City Agency may suspend or discontinue that City Agency’s ongoing City Tasks under this Agreement pursuant to Section 8(g) and Section 8(i). Each City Agency may also suspend its City Tasks due to emergency or health and safety reasons and such suspension of work will not require prior notice or consultation with TJPA, but the City Agency will use good faith efforts to notify TJPA prior to suspension of work and, in any event, will notify TJPA as soon as practicable after any such suspension of work. In addition, each City Agency may elect not to enter into an ASB for a particular Fiscal Year, such that its City Tasks pursuant to this Agreement will expire.
- (d) Certain Obligations Survive Termination. Upon termination, the Parties’ respective rights and obligations under this Agreement will cease, except that such termination will not relieve TJPA of its reimbursement or other obligations incurred with respect to: (1) Eligible Costs incurred with respect to work performed or reimbursable liabilities incurred by City before the date of termination; (2) City costs arising after termination of this Agreement in connection with City Tasks that are underway and are not practicable to stop, and for which City will incur future costs related to either completion of City Tasks or contracts that have been entered into; (3) City costs of restoration or return of Impacted City Improvements back to functionality as determined by the head of the City Agency with jurisdiction; (4) the indemnities and waivers set forth in Section 12; and (5) those terms that expressly survive termination.

4. Purpose

- (a) The Project will be advanced over the course of several years, and TJPA and City expect the scope of City Tasks provided pursuant to this Agreement to change and adjust over time. TJPA and City intend for this Agreement to provide a flexible mechanism that will accommodate the evolving City Tasks that will be undertaken by City for the Project as the Project advances. Therefore, this Agreement is structured to: (1) provide a consistent set of general terms to govern City Tasks, which terms are set forth in the body of this Agreement; (2) provide a mechanism for annual budgeting and agreement on scope of City Tasks undertaken by City Agencies each year; (3) provide a mechanism for reimbursement of Eligible Costs in connection with City Tasks; and (4) provide clarity

and flexibility regarding the approval process for amendments to this Agreement and amendments to the ASBs.

- (b) City and TJPA are committed to act cooperatively and in good faith to fulfill their respective roles in this Agreement and to expeditiously advance and implement the Project. The primary components of the Parties' consultation, cooperation, rights, and obligations in this Agreement are summarized as:

(1) City Property and City Improvements. Construction of the Project will require permanent and/or temporary modification, permanent and/or temporary relocation, protection in place, removal, replacement, or repair of certain City Improvements in City ROW or other City Property. This Agreement also addresses the Project's anticipated temporary occupancy of City ROW and City Property depicted in Exhibit 1, the anticipated documentation and necessary actions and approvals for City's anticipated street vacation and conveyance of subsurface easements to TJPA in furtherance of the Project as described in Appendix A, the identification of Impacted City Improvements, and the planning, design, construction, relocation, protection in place, removal, replacement, or repair of the Modified City Improvements.

(2) City Consultation and Cooperation. Notwithstanding TJPA's exclusive permitting authority with regard to the TJPA Improvements and TJPA's exclusive role as the entity making decisions regarding planning, design, and construction of the TJPA Improvements, City Tasks will include City's consultation and cooperation as part of TJPA's Project planning, design, and construction, for the TJPA Improvements and the overall Project, as described in detail in the ASBs in Appendix B.

(3) Costs and Reimbursements. TJPA's reimbursement of City's Eligible Costs, as described in Section 8.

5. Project Features

- (a) Project Summary. The Project features set forth below are not intended to constitute a comprehensive list of Project features, but are a general description of the elements of the Project that are expected to interface with City ROW, City Property, or City Improvements, or for which the Parties anticipate TJPA will request City consultation and assistance. The Project features are subject to change by TJPA in its discretion, and their description here will not control in interpretation of this Agreement. This Section 5 does not imply any approval by a City Agency of any particular elements of the Project.

The Project will connect Caltrain's regional rail system and the California High-Speed Rail Authority's statewide system to the Salesforce Transit Center in downtown San Francisco. The rail alignment will be constructed principally below grade to provide a critical link for Peninsula commuters and travelers on the state's future high-speed rail system.

- (b) Project Alignment. The Project's alignment begins in the below-grade Salesforce Transit Center. At the west end of the station, the station's six tracks transition to two tracks through a throat structure and continue in a tunnel southward under Second Street and westward under Townsend Street to a new underground station at Fourth Street and Townsend Street. West of the Fourth and Townsend station, near Seventh Street and Townsend Street, the tracks ascend to grade via a u-shaped retained cut (referred to as the "u-wall"). Near Townsend and Sixth Street, the Project includes a tunnel stub box extending side-by-side with the u-wall. From the u-wall, additional trackage (maintenance of way and turnback track) continues southward at-grade to Sixteenth Street. Including below-grade and at-grade trackwork and stations, the total construction length of the Project is approximately 2.1 miles.
- (c) Real Property Affected by Project. The Project will be located on real property that is currently owned or controlled by various entities, including TJPA, the State of California, private parties, Caltrain, City, and the Port pursuant to the Public Trust. See Exhibit 1 for a map of the Project alignment and a summary of the current ownership by category of the affected properties.
- (d) Project Elements. The anticipated main elements of the Project are as follows:
 - (1) Salesforce Transit Center Train Box Extension. The train box extension will extend the existing below-grade structural train box eastward from the east side of Beale Street to TJPA's property line on the west side of 201 Mission Street. This element will allow extension of the platform lengths and provide ventilation and emergency exiting from the east end of the train box. A standalone structure that provides a pedestrian entrance and exit will be located on Beale Street on the northern side of the train box extension. The train box extension, inclusive of the pedestrian entrance/exiting structure, will be constructed on TJPA property, and if approved by City, City Property and/or City ROW.
 - (2) Salesforce Transit Center Fit-Out. Excavation and construction of the below-grade structural train box, excepting the train box extension, is already complete. The fit-out of the two-level train box will include: (i) on the lower concourse ticketing, passenger waiting, and support spaces for Caltrain and the California High-Speed Rail Authority, as well as leasable retail space, and (ii) on the level below will include six tracks and three platforms as well as back-of-house support spaces. The fit-out will occur on TJPA property.
 - (3) Below-Grade Throat Structure. On the west side of the Salesforce Transit Center, the six below-grade tracks reduce to two tracks through a throat structure. It will be constructed on TJPA property, City ROW, City Property, and private property.
 - (4) Below-Grade Tunnel. The rail tracks continue in a tunnel southward under Second Street and westward under Townsend Street to a new underground station at Fourth and Townsend streets. The tunnel will be constructed on City Property and private property. TJPA may need to install rock dowels in certain property

along the tunnel alignment. Cut-and-cover construction will be used along Second Street, Townsend Street, and in portions of the Fourth and King Railyards. Sequential excavation method mining is being considered for a .65 mile portion of the tunnel under Second Street and Townsend Street.

- (5) Fourth and Townsend Street Station. The Fourth and Townsend Street Station will serve Caltrain and high-speed rail passengers. The Station will include street-level entrances and exits along Townsend Street and, in the two levels below grade: (i) a concourse with passenger amenities, mechanical and electrical rooms, and staff areas, and (ii) a train platform level with two tracks and two platforms. The station will be located in Caltrain and private property and current property under Port jurisdiction. Pedestrian entrance/exits to the station are located on Fifth Street in City ROW, City Property, and on Caltrain property along Townsend Street.
 - (6) Ventilation and Emergency Egress. Tunnel ventilation shafts and passenger emergency egress structures will be located along the tunnel alignment, at either end of the Fourth and Townsend Street Station, and at the Salesforce Transit Center. None are located in City ROW or City Property.
 - (7) Utility Facility Relocation. City, DT, SFPUC, SFMTA, and other utility facility relocations are required for the Project. The Parties expect that the owners of all utility facilities other than the City-owned utility facilities and laterals and connections owned by adjacent property owners will bear all costs associated with relocating their infrastructure in the public right-of-way as required for the Project, to the extent required by Law and/or City's franchise or other agreements or permits.
6. Lead Representative of City
- (a) PW Lead Representative. Except as provided in this Agreement, PW will act as the lead representative of City in implementing this Agreement with the cooperation of the City Agencies. Among other things, PW will (a) consult with staff from affected City Agencies, and such City Agencies will contribute personnel and staff time as may be directed by their respective directors or department heads; (b) act as the primary point of contact for seeking resolution and building consensus regarding issues or concerns under this Agreement; (c) manage amendments to this Agreement that require approval of City's Board of Supervisors, including any legislative hearings or approvals of the Board of Supervisors that are necessary under Section 15; and (d) monitor City Agencies' performance against Project timelines.
 - (b) Responsibility for Billing Tasks. OEWD, in consultation with PW and the City Agencies, will manage preparation and processing of City invoices under this Agreement.
 - (c) Designated Principals. City and TJPA will each assign a designated principal with management level authority or higher who will work diligently in good faith on implementation of the Agreement. City's designated principal is the PW Director.

TJPA's designated principal is Alfonso Rodriguez, Project Director. The Parties will give notice of a change in principal in accordance with Section 16.

- (d) No Enlargement of City Agency Authority. By this Agreement, the Parties do not seek to diminish, enlarge, or in any way modify any City Agency's authority under the City's Charter or City Code.

7. Contractors And Subcontractors

In its sole discretion, after the Effective Date, City may retain new contractors and subcontractors to assist City in any aspect of the undertakings contemplated under this Agreement, including outside counsel. City will select all new contractors and subcontractors through standard City procurement processes, including competitive procurement processes where required by City standards. Such procurement processes may be modified by applicable federal requirements, but only if TJPA gives prior notice of such requirements to the relevant City Agency prior to the time the City Agency is undertaking the contractor selection process. In the event that City cannot accommodate any such federal requirements, TJPA will be required to contract for such undertakings. Contractors and subcontractors will work at City's direction and under contract or agreement with City. TJPA will be named as an additional insured of any new contractor's and subcontractor's policy covering general and professional liability, and new contractors and subcontractors will indemnify TJPA consistent with the contractors' and subcontractors' indemnification of City under such contracts and subcontracts. For purposes of this Section, a "new" contractor or subcontractor is a party to a contract by City entered into after the Effective Date. For contracts entered into by City before the Effective Date, TJPA will notify City Agencies in their ASBs of TJPA's request to be insured and indemnified under an existing contract under which a contractor will perform City Tasks. Following such notice, City will use good faith efforts to have TJPA named as an additional insured on the contractor's and any subcontractor's policy covering general and professional liability, and to have TJPA indemnified consistent with the contractors' and subcontractors' indemnification of City under such contracts and subcontracts.

8. Annual Scopes & Budgets

- (a) Eligible Costs. TJPA will reimburse City for its Eligible Costs in accordance with this Section 8. "**Eligible Costs**" means the actual costs incurred by City for work performed by City or its contractors or subcontractors to advance the Project, including: (1) fees and expenses of the City Attorney at the rates charged by the City Attorney to City Agencies; (2) actual fees and expenses of any outside counsel and third party contractors, subcontractors, consultants, advisors, and professionals (including real estate appraisers) for City Tasks; (3) actual costs related to public outreach and information; (4) costs of staff time of City employees for City Tasks; (5) permit fees and other City costs as specified in the ASBs; (6) City expenses for emergency repair work or other expenses incurred as a result of construction emergencies or damage resulting from the Project; (7) City costs arising after termination of this Agreement in connection with City Tasks that are underway and are not practicable to stop, and for which City will incur future costs related to either completion of City Tasks or contracts that have been entered into; and (8) City costs of restoration or return of Impacted City Improvements back to

functionality as determined by the head of the City Agency with jurisdiction. Eligible Costs do not include costs that are paid or reimbursed through other agreements between TJPA and City or paid by third parties to City. Eligible Costs do not include costs relating to City's role on the Project Executive Steering Committee and participation in the Project's Integrated Project Management Team, or their successor governance entities.

- (b) City Staffing. In its sole discretion, City may determine its staffing of work under this Agreement, including choosing to use outside counsel, contractors or consultants in accordance with Section 7 when PW or the applicable City Agency deems necessary. OEWD will be responsible for coordinating the billing of all City Agencies as described in this Section 8. TJPA will pay Eligible Costs through termination of this Agreement, including Eligible Costs incurred after termination that are described in Section 8(a)(7), and TJPA's obligation to pay such Eligible Costs will survive termination of this Agreement.
- (c) Eligible Costs Limited to Annual Scope & Budgets. TJPA's obligation to pay Eligible Costs will not exceed the amounts agreed upon in the ASBs, unless (i) Citywide Contingency Funds are allocated to an ASB to cover additional Eligible Costs, or (ii) TJPA and City agree in writing to increase such amount. Each City Agency may suspend or discontinue that City Agency's ongoing City Tasks under an ASB if there are insufficient funds in that City Agency's ASB, in accordance with Section 3(c).
- (d) Budgetary Process. Beginning on the first July 1 after the Effective Date and continuing in each subsequent July 1 through June 30 (each, a "**Fiscal Year**") during the Term, the Parties will cooperate to develop a proposed budget for Eligible Costs expected to be incurred in that Fiscal Year. By December 1 of each Fiscal Year during the Term, TJPA will submit to each City Agency a proposed scope and budget ("**Proposed Scope & Budget**") for the subsequent Fiscal Year based on the scope of work TJPA anticipates asking each City Agency to perform that Fiscal Year under its particular ASB. TJPA and each City Agency, in consultation with OEWD, will work together based upon TJPA's Proposed Scope & Budget to prepare agreed upon revisions to the current ASB prior to the start of the next Fiscal Year. The approval of the TJPA Board of Directors (or Executive Director, consistent with TJPA policy), must be obtained as to any amended, new, or replacement ASB for any subsequent Fiscal Years. The approval of the director of each City Agency and, if required by that City Agency, the City Agency's governing body, must be obtained as to any amended, new, or replacement ASB for any subsequent Fiscal Years, and the approval of OEWD must be obtained for the overall Fiscal Year budget and scope. If an amended, new, or replacement ASB for a subsequent Fiscal Year is so approved, and so long as such budgetary changes, scopes of work, or other terms of an ASB are not Material Changes, then once duly approved and signed by the affected City Agency and TJPA each ASB will be deemed amended to incorporate that amended, new, or replacement scope of work, terms, and not to exceed budget for reimbursement of Eligible Costs. If an amended ASB includes a Material Change, then it must be approved by City's Board of Supervisors.
- (e) City Attorney Eligible Costs. Work of the City Attorney will not be bound by a particular ASB or Fiscal Year budget allocation. The Parties anticipate that each individual City

Agency's ASB will include a budgeted amount for legal expenses anticipated in connection with such ASB.

- (f) Citywide Contingency Funds. The Parties anticipate that the overall Fiscal Year budget may include contingency funds that are not allocated to any particular City Agency's ASB ("**Citywide Contingency Funds**") but are included in OEWD's ASB. OEWD may, in consultation with a City Agency and with the consent of TJPA's designated principal (1) reallocate all or a portion of the Citywide Contingency Funds to a City Agency in order to increase the funds allocated to that City Agency under its ASB, (2) allocate Citywide Contingency Funds for Eligible Costs incurred under this Agreement by a City Agency that does not have an ASB, or (3) allocate Citywide Contingency Funds for any Eligible Cost that is not otherwise reflected in the ASBs.
- (g) Increase in Budget; City Agency Right to Suspend Work. If the budget for any City Agency provided in an ASB is exceeded or if a City Agency anticipates that it will be exceeded, and if Citywide Contingency Funds have not been allocated to such ASB, then such City Agency may suspend or discontinue that City Agency's ongoing City Tasks under this Agreement, provided that it first emails notice from the head of the City Agency to TJPA's designated principal, consults with TJPA and OEWD, and determines that there are insufficient funds in that City Agency's ASB to reimburse such City Agency for Eligible Costs it will incur if its ongoing City Tasks continue. TJPA may prevent such City Agency from suspending or discontinuing its City Tasks either in full or in part by dedicating new budgetary amounts above those allocated to the City Agency in that agency's ASB in an amount agreed by the City Agency in consultation with OEWD. If a situation arises in which a budget is exceeded or City anticipates that it will be exceeded, and there is a City Agency with ongoing City Tasks that are not practicable to stop, the Parties agree to work in good faith to address the situation to avoid unnecessary costs and to ensure that City is fully reimbursed for all City Tasks, including use of the dispute resolution process pursuant to Section 14.
- (h) Quarterly Billing. OEWD will provide TJPA with quarterly invoices. The invoices will indicate the hourly billing rate for each City staff position applicable at the time the cost was incurred, the total number of hours spent by each City position on the tasks during the invoice period, and any additional costs incurred by City. Quarterly invoices will also include a brief non-confidential description of the work completed by each City Agency in the applicable quarter. TJPA will have no obligation to reimburse City for any Eligible Cost that is not invoiced to TJPA within six (6) weeks after the close of the Fiscal Year in which the costs were incurred, or as soon thereafter as possible. TJPA understands that detailed billing reports from the City Attorney to City Agencies are confidential. As a result, OEWD will review them for reasonableness and accuracy, but will provide to TJPA only a summation of the hours billed per attorney during the invoiced period together with the applicable billing rates.
- (i) Payment; Suspension for Nonpayment. TJPA will pay invoiced amounts within forty-five (45) calendar days after receipt from OEWD (or as soon thereafter as possible); in no event will TJPA be liable for interest or late charges for any late payments. Each City Agency may suspend or discontinue that City Agency's ongoing City Tasks under this

Agreement if past due payments are not made within seventy-five (75) days after OEWD sends the invoices, provided that the City Agency first follows the notice and confer procedures described in Section 8(g).

- (j) Billing Disputes. If TJPA in good faith disputes any portion of an invoice, then within forty-five (45) calendar days after receipt of the invoice, TJPA will provide OEWD written notice of the amount disputed and the reason for the dispute, and the Parties will use good faith efforts to reconcile the dispute as soon as practicable. TJPA will have no right to withhold payment for Eligible Costs incurred by City staff before any termination of this Agreement.

9. City Improvements

The following table describes the categories of City Improvements and which City Agencies have primary jurisdiction in terms of ownership, permitting responsibility, construction oversight, and maintenance responsibility. The table is intended for illustrative purposes and is not controlling with regard to City Agency jurisdiction.

City Improvements	Owner	Permitting Responsibility	Construction Oversight	Maintenance Responsibility
Sewer	SFPUC	PW	SFPUC & PW	SFPUC
Low-Pressure Water	SFPUC	PW	SFPUC	SFPUC
Power	SFPUC	PW	SFPUC	SFPUC
City ROW	PW	PW	PW	PW
Fiber	DT	PW	PW	DT
Auxiliary Water Supply System	SFPUC	PW	SFPUC	SFPUC & SFFD
Transit, Parking and Traffic Infrastructure and Impacts	SFMTA	SFMTA & PW as applicable	SFMTA	SFMTA

- (a) General. Under state law (Public Resources Code section 5027.1), TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program. With respect to the subset of Project Improvements that are the Modified City Improvements, City retains all of its rights and authorities as the owner of such improvements and any rights and obligations as a governmental authority with jurisdiction. The following terms and conditions apply to identifying Impacted City Improvements and planning, design, and construction of the Modified City Improvements. The Parties acknowledge that certain City Agencies have requirements for identifying and resolving disturbances or impacts to the Impacted City Improvements that are additive to or modify the following terms and conditions for Impacted City Improvements and Modified City Improvements controlled by such City

Agency, which requirements will be specified in the ASBs. To the extent of any inconsistency between the generally-applicable terms and conditions in the body of this Agreement and the specific terms and conditions applicable to the Impacted City Improvements and Modified City Improvements controlled by a particular City Agency and specified in the ASBs, the more specific terms and conditions in the ASBs will apply.

(b) Identifying and Resolving Impacted City Improvements. With regard to identifying Impacted City Improvements, TJPA and City agree as follows:

(1) Avoid Impacts Where Feasible. TJPA will plan, design, and construct the Project to avoid impacting City Improvements to the extent feasible. The Parties will cooperate to reduce impacts of the Project on City Improvements; police; fire; City services and programs; and emergency services. The Parties acknowledge, however, that effects on certain City Improvements will be unavoidable. An essential purpose of this Agreement is to describe the procedures and requirements for TJPA to mitigate such effects to Impacted City Improvements to the satisfaction of the City Agencies with jurisdiction, in such City Agencies' sole discretion. If TJPA believes that a City Agency is being unreasonable in making such determination, TJPA may initiate dispute resolution in accordance with Section 14.

(2) Subphase List of Impacted City Improvements. TJPA will be responsible for researching existing conditions in the Project area (including any subsidewalk basement or other encroachments into the City ROW), in consultation with the City Agencies that will be affected by the Impacted City Improvements, to identify possible disturbances and impacts to City Improvements. TJPA will consult with affected City Agencies to determine the appropriate scope and sequence of each subphase. TJPA will prepare and provide to each affected City Agency a comprehensive list of all anticipated Impacted City Improvements for each subphase of the Project, with improvement plans showing the planned Project Improvements, existing encroachments, and their proximity to City Improvements, and the following information with regard to each anticipated Impacted City Improvement: (i) which City Agency TJPA believes has jurisdiction over the Impacted City Improvement or element thereof; (ii) the proposed solution for the impact to the Impacted City Improvement including permanent and/or temporary modification, permanent and/or temporary relocation, protection in place, removal, replacement, or repair; (iii) the anticipated timeframe for planning, design, review and permitting, procurement, relocation and construction of the Modified City Improvement; and (iv) the proposed division of responsibility for design and installation of the Modified City Improvement, if applicable.

(3) Review. Each affected City Agency will review TJPA's list of anticipated Impacted City Improvements for accuracy and completeness, and City Agencies with jurisdiction will advise TJPA of the need for changes to the list. The Parties will cooperate to revise the list as necessary, to add, delete, or modify improvements on the list of anticipated Impacted City Improvements. A City Agency's review and input regarding anticipated Impacted City Improvements will not relieve TJPA of its responsibility to resolve impacts to Impacted City Improvements that are not included in the list. Within thirty

(30) days, affected City Agencies will review and provide feedback on the accuracy and completeness, need for changes to the list, proposed solutions for Impacted City Improvements, anticipated timeframes, and proposed division of responsibility provided by TJPA. The impacts will be identified and resolved in accordance with City Codes and this Agreement.

(4) Plan Changes. Changes to plans for Project Improvements and newly discovered conditions may create additional Impacted City Improvements. If changes to plans or conditions discovered create previously unanticipated Impacted City Improvements, the disturbances and impacts will be resolved as they arise consistent with the process provided in this Section 9(b).

(5) Betterments. “**Betterment**” means an increase or improvement to the kind, quality, capacity, durability, or efficiency of an Impacted City Improvement requested by a City Agency that is beyond the kind, quality, capacity, durability, or efficiency of what is required under Section 10(c); provided “Betterment” does not include any such increase or improvement that (i) TJPA agrees to incorporate into the Project at TJPA’s expense and in TJPA’s sole discretion, or (ii) that matches or is of substantially similar kind, quality, capacity, durability, or efficiency as the existing City Improvement. If the Parties cannot agree on whether work would constitute a Betterment, the Parties will attempt to resolve the disagreement by following the dispute resolution processes provided in Section 14. City will be responsible for any fully documented incremental costs due to the Betterment. TJPA will cooperate with City on any design or construction for any Betterment desired by a City Agency with jurisdiction. TJPA will engage with City Agencies with jurisdiction early enough in the design process for identifying and resolving Impacted City Improvements for such agencies to have the opportunity to consider and request Betterments. If a City Agency desires a Betterment, it must notify TJPA no later than review of sixty five percent (65%) completion of the design for any Modified City Improvement.

(6) Responsibility for Funding and Implementing Work. TJPA will be responsible for supporting, funding, and implementing the design and construction of the Modified City Improvements, including payment of Eligible Costs, except that City will be responsible for increased costs resulting from Betterments. A City Agency may elect to perform the design and construction for one or more Modified City Improvement(s) at TJPA’s cost by giving written notice to TJPA prior to sixty five percent (65%) completion of the design for any Modified City Improvement.

(7) Approval. TJPA must obtain prior written approval and consent from each City Agency with jurisdiction, consistent with Section 10 and otherwise in the manner such City Agency specifies pursuant to its ASB, for the resolution of all Impacted City Improvements.

10. Design Review and Permitting of Modified City Improvements.

- (a) Design Approval. TJPA must obtain prior written approval and consent from each City Agency with jurisdiction of the final designs for each Modified City Improvement prior to submitting a permit application for any Modified City Improvement, including a permit set or approval application.
- (b) Improvement Plans. “**Improvement Plan**” means a set of improvement and engineering plans showing the location and construction details of Modified City Improvements and the Project’s current design (including the location of TJPA Improvements and all third party improvements and utilities) in relation to the Modified City Improvements and other City Improvements. Improvement Plans for each Modified City Improvement, or a collection of related Modified City Improvements, will be submitted to the appropriate City Agencies as follows:
- i. First Submittal, thirty percent (30%) design level
 - ii. Second Submittal, sixty five percent (65%) design level
 - iii. Third Submittal, ninety five percent (95%) design level
 - iv. For final review, one hundred percent (100%) design level
 - v. A permit set or approval application that will comprise the final Improvement Plans that will be attached to the specific City permit granting permission for TJPA to modify City Improvement.

TJPA will provide at least fourteen (14) days advance notice of each submittal date to the appropriate City Agencies. Each TJPA submittal after the first submittal will incorporate comments and revisions required by the reviewing City Agencies in the form preferred by the reviewing City Agencies.

- (c) Design Standards. TJPA will design Modified City Improvements (i) to be of an equivalent (or, in TJPA’s discretion, superior) kind, quality, and capacity compared to the existing City Improvements they modify, relocate, or repair; and (ii) to comply with City Code, as determined by City Agencies with jurisdiction over the subject Impacted City Improvement, and other Law. Modified City Improvements will be designed to provide sufficient access for maintenance, repair, and replacement in accordance with City Code. Should TJPA seek an exception from a specific standard, such exception request must be identified and explained within any Improvement Plan submittal and follow the relevant City Agency’s procedure for requesting exceptions. If no City Code exists for such work, the modification, relocation, or repair will be designed to the standard designated by City Agencies with jurisdiction.
- (d) Consultation at 65% Design and Permit Set or Approval Application. TJPA will offer a page-turn design review for City Agencies with jurisdiction over the Modified City Improvements (after submitting plans to such City Agencies for review at least thirty (30) days in advance), and/or a detailed walk-through of the Improvement Plan elements, at the sixty five percent (65%) design level and permit set levels prior to official submittal for final approval. TJPA will address to City’s satisfaction all City comments prior to official submittal of final Improvement Plans. The Parties, including City Agencies, may request additional design review meetings as needed at any point prior to final approval.

- (e) City Review. City Agencies will endeavor to review and issue comments on each level of Improvement Plan submittals for Modified City Improvements within thirty (30) days after receipt of the official submittal from TJPA. The PW Director's designee will coordinate review and comment by other City Agencies as needed and at PW's discretion, and will endeavor to incorporate other City Agency comments into one submittal to TJPA within the thirty (30) day response time. All Improvement Plan submittals will include detailed information, and the turnaround time for the City Agencies will depend in part on the amount of new information included and the quality of each submittal, including TJPA responsiveness to prior comments from a City Agency. Each City Agency with jurisdiction will determine when more than thirty (30) days is needed to provide its comments for any submittal to TJPA and will notify TJPA accordingly. Any City Agency that fails to deliver its comments on an Improvement Plan submittal to TJPA within thirty (30) days, or such extended period, will at TJPA's request take all reasonable measures necessary to ensure that the applicable Improvement Plan submittal will be reviewed within thirty (30) days from TJPA's request.
- (f) Permits. TJPA must obtain all permits required by Law from City Agencies. Without limitation, the Parties anticipate that TJPA will seek the following City permits and permissions for each Impacted City Improvement or Modified City Improvement or set of Modified City Improvements, as applicable:
- (i) Street Improvement Permits for a phase, subphase, or segment of the Project at a time (including all subsurface and surface improvements in a complete street section, with City's agreement as to what constitutes each phase, subphase, or segment). (PW)
 - (ii) Permits for tree trimming or tree removal from PW under Article 16 of the Public Works Code (Urban Forestry Ordinance)
 - (iii) Special Traffic Permits (SFMTA)
 - (iv) Extralegal Truck Permits (SFMTA)
 - (v) Muni Construction Support and Clearance Permits (SFMTA)
 - (vi) General Excavation Permits (PW)
 - (vii) Utility Excavation Permits (PW)
 - (viii) Major and Minor Encroachment Permits (PW)
 - (ix) Street Space Permits (PW)
 - (x) Additional Street Space Permits (PW)
 - (xi) Temporary Occupancy Permits (PW)
 - (xii) Special Sidewalk Permits (PW)
 - (xiii) Vault Permits (PW)
 - (xiv) Night Noise Permits (PW)
 - (xv) Clearance permits, including electrical clearance (SFMTA)
 - (xvi) Track access permits for SFMTA infrastructure (SFMTA)
- (g) Completion Security. TJPA will require the construction contractor for any Modified City Improvement to provide, prior to issuing a notice to proceed with the work, performance and payment bonds or a standby letter of credit in the full amount of the contract and on terms acceptable to City. If the contract value increases by ten percent (10%) or more,

TJPA will require the contractor to increase the value of the performance and payment bonds to the full updated contract amount. The performance and payment bonds or standby letter of credit will be maintained in full force and effect for the statutory period for latent defects following Final Completion.

- (h) Offer of Improvements. At the time of permit issuance, TJPA will provide an irrevocable offer of improvements for the permitted Modified City Improvements, on City's standard form.

11. Construction Requirements for Project Improvements and Inspection and Acceptance of Modified City Improvements.

- (a) Construction. TJPA will construct or otherwise work on the Modified City Improvements in conformance with the final Improvement Plans and permit set (or approved application if no permit set is applicable to the work), subject to changes approved by the impacted City Agency and permit-issuing City Agency, and in adherence with the Project's Mitigation Monitoring and Reporting Program under CEQA. Certain City Agencies require that work be done by the City Agency with jurisdiction over the Impacted City Improvement or Modified City Improvement, such as certain work on water or power infrastructure. The relevant City Agency will identify that work during the review process in Section 9.

- (b) Documentation of Existing Conditions; Damage.

- (i) Existing Conditions. Prior to commencing work in an area, TJPA will research, prepare and provide each affected City Agency with documentation of the existing conditions of City Improvements, City ROW, and City Property that may be affected by the Project, in accordance with City Codes or as otherwise required by City Agencies with jurisdiction over such City Improvements, City ROW, and City Property and as specified in its ASB.

- (ii) Damaged City Improvements; Post-Completion Condition Assessment. TJPA will be responsible for the cost of repairing or replacing any City Improvements, City ROW, and City Property damaged by the Project, whether or not such City Improvements were previously identified as Impacted City Improvements, City ROW, or City Property that may be affected by the Project. TJPA will comply with City Codes regarding post-construction assessment of City ROW, City Property and City Improvements (e.g., post-construction sewer video inspections). Upon or prior to requesting City's Acceptance of any portion of Modified City Improvements, TJPA will (i) identify any damage to City Improvements caused by the Project, and (ii) for comparison, provide City with video and photographic records of the City ROW, City Property and each particular City Improvement before and after the work affecting it in accordance with the standard City procedure applicable to such City Improvement, the affected City Property and City ROW, or as otherwise required by City Agencies with jurisdiction as may be further specified in their ASBs.

- (c) Emergencies. During construction of the Project Improvements, the City Agency with jurisdiction together with PW and TJPA will each provide the other with a list of its personnel to be contacted in the event of an emergency regarding such City Improvements within the work area, including any unanticipated damage to existing City Improvements or Modified City Improvements. TJPA will notify City of Urgent Work in City Property, City ROW, and/or to City Improvements as soon as possible, and prior to commencing work unless an immediate response is required to prevent damage to City Property, City ROW, or City Improvements or physical harm to persons entering City Property or City ROW (in which case TJPA will notify City as soon as reasonably practicable under the circumstances and TJPA will endeavor to take photographs and document any observations concerning damaged City Improvements and preserve and share with City records regarding the same). In case of an emergency requiring an immediate response, TJPA will provide notice via telephone or email. “**Urgent Work**” means any work that must be completed on less than thirty (30) days’ prior notice to (1) prevent damage to persons or City Property, City ROW, or City Improvements, (2) prevent flooding upstream or within City Property, City ROW, or private property, or (3) maintain compliance with this Agreement, City Code, and any Laws due to unforeseen circumstances.
- (d) Site Security. TJPA will be responsible for maintaining the safety and security of TJPA construction areas within City ROW or other City Property provided that City will maintain its authority to access the City Improvements, and will have unrestricted access by City’s Police Department and SFFD to all TJPA construction areas and as required by Law.
- (e) Public Hotline. During construction of the Project, TJPA will assign a lead representative to receive and respond to Project construction-related complaints or questions from City residents, City officials, and/or City staff. TJPA will provide written notice to City and will publicize the telephone number and email address of the lead representative. TJPA will make an initial response to all complaints or questions within a reasonable period of time, not to exceed 72 hours. For urgent matters, TJPA will make initial contact immediately. TJPA will address complaints or questions within a reasonable time following initial contact with the complainant or inquirer. TJPA will take all reasonable actions to ensure that its lead representative is authorized to and does, in fact, ensure that TJPA implements corrective actions within a reasonable period of time following a determination that corrective actions are appropriate. City and TJPA will also coordinate with one another on responses to Project construction-related calls to 311.
- (f) Public Notice of Construction Activities. During work on the Project, TJPA will provide weekly or more frequent construction updates via social media, the TJPA website, by email, and such other means as TJPA deems appropriate. TJPA will comply with all City public notice requirements, as set forth in *Regulations for Working in San Francisco Streets* (Blue Book) and as otherwise required under City Code for construction of the Modified City Improvements. If TJPA performs construction during nighttime hours (8:00pm to 7:00am), TJPA will provide notice (via written flyer and such other means as TJPA deems appropriate) to all residences and businesses located within three hundred

(300) feet of the Project site at least seventy-two (72) hours in advance of the scheduled work. TJPA will comply with San Francisco's Language Access Ordinance for all communications. TJPA will provide copies of all public notices to City Agencies with jurisdiction over the relevant City Improvements or Modified City Improvements. TJPA will provide an initial notice of any road and driveway closures resulting from the Project at least fourteen (14) days in advance of the closure, with notice directly to SFMTA at the same time of any closures that impact transit, bicycle routes, or pedestrian walkways. Visual notifications of closures will be posted at least seventy-two (72) hours in advance.

- (g) Noise and Lighting Requirements for Nighttime Work. During construction of the Project, TJPA will implement MMRP measures NoiC 1, NoiC 2, NoiC 3, NoiC4, NoiC 5, and NoiC 6 which address construction project night time noise, and measures VA 1 and VA 2, concerning nighttime lighting and other aesthetic and visual effects of construction. MMRP measure NoiC1 requires compliance with the San Francisco Noise Ordinance.
- (h) Construction Coordination. TJPA will coordinate TJPA's construction activities for the Project with City so as not to unreasonably conflict or interfere with other City construction projects in the same geographical location as the Project. TJPA will attend citywide construction coordination meetings on an as-needed basis as determined by City to discuss the Project and work on Modified City Improvements; such meetings may include monthly meetings of the Committee for Utility Liaison on Construction and Other Projects (CULCOP) and TJPA will establish a regular monthly coordination meeting with all relevant parties, as designated by the PW Director's designee, to coordinate Project progress and construction. City also may require TJPA to join the Underground Service Alert program at any time.
- (i) Obtaining Substantial and Final Completion of Modified City Improvements.
 - (1) City Inspection and Review. TJPA will comply with all City Codes concerning inspection, Substantial Completion and Final Completion of Modified City Improvements. TJPA will request City confirmation of Substantial Completion and Final Completion and City will issue confirmation in accordance with City Codes. A request for confirmation of Substantial Completion will precede a request for confirmation of Final Completion.
 - (2) Acceptance. Acceptance of certain Modified City Improvements will be subject to approval by City's Board of Supervisors or as determined by City. Acceptance of Modified City Improvements will not constitute a waiver of any City claims regarding defects.
 - (3) Warranty. Prior to Final Completion of any Modified City Improvements and as a condition for obtaining Final Completion, TJPA or its contractor will provide to City a warranty bond or a standby letter of credit on terms acceptable to City for a period of two (2) years following Final Completion of the Modified City Improvement(s). TJPA covenants that all Modified City Improvements will be free from defects in material or

workmanship and will perform satisfactorily. The performance of any so-called “ground improvements” will be evaluated pursuant to the thresholds set forth in PW Director's Order No. 203570. The warranty period for plant materials and trees planted by TJPA shall not commence until TJPA’s designated principal receives a certification from the PW Director’s designee (in consultation with affected City Agencies) that a plant establishment period set in accordance with the Plans and Specifications has passed. During the warranty period and upon request from City, TJPA will inspect, correct, repair or replace (collectively, “**Repair**”) any defects in the Modified City Improvements as necessary, at its own expense and to City’s satisfaction. If (i) TJPA fails to act with reasonable promptness to make such Repair, (ii) TJPA makes a Repair that is not satisfactory to City, (iii) a Repair is required due to an emergency, or (iv) the Repair is customarily performed by City rather than contractors, at City’s sole discretion, City may make the necessary Repair and TJPA will reimburse City for the actual cost thereof. TJPA’s responsibility during the warranty period includes repairing defects and defective material or workmanship, but not ordinary wear and tear or harm or damage from improper maintenance or operation of the Modified City Improvements by City.

(4) Responsibility After Acceptance. Following Acceptance, City will own and be responsible for the Modified City Improvements, subject to TJPA’s warranty pursuant to Section 11(i)(3) or unless otherwise expressly provided in this Agreement.

Notwithstanding anything to the contrary in this Agreement, City does not waive its protection for latent defects, and TJPA and its Contractors will remain liable for the full statutory period applicable to latent defects.

12. Indemnification And Waiver

- (a) General. To the fullest extent permitted by law, TJPA will, and will require its contractors to, indemnify and hold harmless City and its officers, agents and employees (“**Indemnitees**”) from, and, if requested, defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) (collectively, “**Claims**”) arising from or in any way connected with performance of this Agreement or City Tasks performed by the City Agencies in connection with this Agreement, including any: (1) injury to or death of a person, including employees of City or TJPA; (2) loss of or damage to property; (3) violation of local, state, or federal common law, statute or regulation, including privacy or personally identifiable information, health information, disability and labor laws or regulations; (4) strict liability posed by any law or regulation; (5) inverse condemnation; (6) increased construction costs and/or projects delays; or (7) City’s use of facilities or equipment provided by TJPA or others. The foregoing indemnity applies regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on an Indemnitee, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such Claim is the result of the sole and exclusive gross negligence or willful misconduct of an Indemnitee and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on TJPA or its Agents. The foregoing indemnity includes, without limitation, reasonable fees of attorneys, consultants, and experts and related costs and City’s costs of

investigating any claims against City. For the defense of any claims against City tendered to a design professional that provides services to City for the Project, TJPA will reimburse the design professional for the proportionate percentage of defense costs exceeding the design professional's proportionate percentage of fault as determined by a Court of competent jurisdiction; this additional reimbursement obligation is applicable only to defense provided by a design professional and not to City, its construction contractors at any tier, or any other party.

- (b) Defense Obligation. In addition to TJPA's obligation to indemnify the Indemnitees, TJPA specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnitees from any Claim which actually or potentially falls within this Section 12, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to TJPA by City and continues at all times thereafter; provided that City may elect to handle its own legal defense, with or without outside counsel, at TJPA's cost. TJPA will include in Project-related contracts with third parties that such third parties have the same immediate and independent defense obligation to the Indemnitees as well as to TJPA.
- (c) Proprietary Rights. TJPA and its Agents will indemnify and hold harmless the Indemnitees from any and all Claims for any infringement of the patent rights, copyright, trade secret, or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising from or in any way connected with performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such Claim is the result of the sole and exclusive gross negligence or willful misconduct of an Indemnitee and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on TJPA or its agents or employees.
- (d) Governmental Immunities. Any City Tasks performed by City pursuant to this Agreement may not be construed to waive any associated governmental immunities, including immunities for discretionary functions, design, permitting, inspections, and failure to enforce the Law. To the extent a third party alleges and/or a court of competent jurisdiction determines that any governmental immunities contained within Government Code section 800 et. seq do not apply to City Tasks provided by City to TJPA under this Agreement, TJPA will indemnify and hold harmless the Indemnitees from any and all Claims except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such Claim is the result of the sole and exclusive gross negligence or willful misconduct of an Indemnitee and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on TJPA or its agents or employees.
- (e) Waiver of Special Damages.

UNLESS OTHERWISE SPECIFIED HEREIN, IN NO EVENT WILL CITY BE LIABLE TO TJPA, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, OR

INCIDENTAL DAMAGES, INCLUDING LOST REVENUE, OR LOST PROFITS ARISING FROM OR IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT OR THE SERVICES OR WORK PERFORMED BY CITY AGENCIES IN CONNECTION WITH THIS AGREEMENT.

- (f) Severability. It is the intention of the Parties that should any term of this indemnity provision or its application to any person, entity, or circumstance be found to be void, invalid, or unenforceable, the remainder of the provision, or the application of the provision to persons, entities, or circumstances other than those as to which it is invalid or unenforceable, will not be affected by that finding, and each other provision of this indemnity provision will be valid and be enforceable to the full extent permitted by Law.
- (g) Exceptions. Notwithstanding the foregoing (i) TJPA's indemnity obligation under this Section 12 will not apply to responsibility after Acceptance to the extent relieved by Section 11(i)(4), and (ii) TJPA's indemnity obligation under this Section 12 will not apply to design and construction City elects to perform for Modified City Improvements pursuant to Section 9(b)(6), although it will apply to materials provided by TJPA in such cases.
- (h) Survival. The indemnities and waivers set forth in this Section 12 will survive termination or expiration of this Agreement, except to the extent relieved by Section 12(g).

13. Insurance

- (a) TJPA will provide evidence of the insurance required pursuant to Section 13(c) prior to commencement of construction on City Property, City ROW, or relating to an Impacted City Improvement, and will provide copies of full policies upon request. TJPA will name the City and County of San Francisco, its officers, agents, and employees as additional insureds on all TJPA liability insurance policies applicable to the Project, with the exception of professional liability insurance. TJPA will not materially modify or diminish its insurance program or the amounts, coverages, or types of insurance it carries without prior written notice to City's Risk Manager.
- (b) TJPA will require all contractors and subcontractors engaged in connection with the Project to name City, its officers, agents, and employees, as an additional insured on all liability insurance policies that TJPA requires of its contractors, with the exception of professional liability insurance. TJPA will promptly deliver to City certificates of insurance and evidence of additional insured coverage for each policy referenced in this Section 13.
- (c) The Parties expect that distinct components of the Project Improvements will require varying insurance coverages depending upon the nature and scope of each such component, which are difficult to ascertain as of the Effective Date. Accordingly, TJPA will seek in writing the City Risk Manager's recommended insurance coverage types, levels, and terms and conditions for each TJPA contractor and subcontractor working in

any City Property, City ROW, or in connection with any City Improvements, and will obtain the City Risk Manager's prior written approval of any such insurance for each contract. The City's Risk Manager will have no less than fifteen (15) business days to provide its written recommendation for each such contract. To the extent TJPA reasonably concludes that the City Risk Manager's recommendation is in excess of what is reasonably necessary to fulfill TJPA's indemnity obligations or is not reasonably available in the marketplace, the Parties will follow the procedures specified in Section 14 to resolve the matter. If TJPA implements the City Risk Manager's recommendation as to a particular contract, City will not have the right to subsequently require TJPA to make changes to that contractor's insurance coverage types, levels, or terms and conditions, provided that if there is a material change to the contract terms or scope, the City's Risk Manager may modify its requirements related to such change.

14. Resolution Of Disputes; Default

(a) Informal Resolution. Before sending a notice of default, the Parties will attempt to resolve any dispute over interpretation or implementation of this Agreement, or any failure to perform or fulfill its obligations under this Agreement at the designated staff levels using the steps described below:

(1) First Level. Each Party will designate Project staff to be the initial person to discuss any apparent default, dispute or disagreement between the Parties and initiate the procedure described herein. Each such designated first-level person may contact their counterpart at the same level at any time to raise any apparent dispute or disagreement related to this Agreement. The first-level persons will use good faith in an attempt to resolve the matter. For City, the first-level person is [REDACTED], PW, or such other person designated by PW in writing. For TJPA, the first-level person is Anna Harvey, Deputy Project Director, or such other person designated by TJPA's Executive Director in writing.

(2) Second Level. Each Party will designate individuals to whom matters not resolved at the First Level will be referred. Each such designated second-level person may contact their counterpart at the same level at any time to raise any apparent dispute or disagreement related to this Agreement. The second-level persons will use good faith in an attempt to resolve the matter. For City, the second-level person is [REDACTED], PW, or such other person designated by PW in writing. For TJPA, the second-level person is Alfonso Rodriguez, Project Director, or such other person designated by TJPA's Executive Director in writing.

(3) Third Level. Each Party will designate individuals to whom matters not resolved at the Second Level will be referred. Each such designated third-level person may contact their counterpart at the same level at any time to raise any apparent dispute or disagreement related to this Agreement. The third-level persons will use good faith in an attempt to resolve the matter. For City, the third-level person is PW Director. For TJPA, the third-level person is Adam Van de Water, Executive Director, TJPA.

- (b) Default. The following constitutes a “**Default**” under this Agreement: (1) the failure to make any payment within sixty (60) days following notice that such payment was not made when due and demand for compliance; and (2) the failure to perform or fulfill any other material term, provision, obligation, or covenant of this Agreement and the continuation of such failure for a period of sixty (60) days following notice and demand for compliance. Notwithstanding the foregoing, if a failure can be cured but the cure cannot reasonably be completed within sixty (60) days, then it will not be considered a Default if a cure is commenced within said sixty (60) day period and diligently prosecuted to completion thereafter. Any notice of default given by a Party will specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured (if at all).
- (c) Mediation. Prior to commencement of any formal litigation for disputes arising out of this Agreement, the Parties may agree to submit the matters in controversy for non-binding mediation to a neutral mediator jointly selected by the Parties. The costs of said mediator will be borne evenly by the Parties.

15. Amendments and Annual Approvals

- (a) General. This Agreement may only be amended or otherwise modified with the mutual written consent of City and TJPA.
- (b) Approval of Annual Scope & Budgets. The Parties agree that while each City Agency’s individual ASB will incorporate the general terms of the body of this Agreement (except as may otherwise specifically be provided in the ASB), each such annual ASB will not require the approval of City’s Board of Supervisors except as part of the approval of the City Agency’s annual budget process or if such ASB constitutes a Material Change. The Parties recognize that the ASBs initially entered into and attached as Appendix B to this Agreement may not include all aspects of City Tasks that TJPA will request of City Agencies in order to advance the Project over time. Accordingly, the Parties anticipate that TJPA and one or more City Agencies will revise the previously-approved ASBs each Fiscal Year to increase funds payable to City and to modify City Tasks performed by a City Agency under this Agreement as development of the Project continues and as necessary to accomplish the Parties’ mutual goals. If a new, amended or modified ASB is approved and signed by TJPA and a City Agency, and so long as the new or changed terms of such ASB are not Material Changes and are included in the City Agency’s approved annual budget, then once signed by the City Agency and TJPA each such ASB will be deemed amended to include City Tasks, terms of the ASB, and funding provided by TJPA or other external funding courses.
- (c) Material Changes. “**Material Change(s)**” means any amendment or other modification of this Agreement that would (1) materially alter the rights, benefits or obligations of City under the body of this Agreement or Appendix A (but excluding the ASBs); (2) alter the scope or increase the impact of the Project in a manner that materially impairs City’s rights, benefits, obligations, or liabilities under the body of this Agreement or Appendix A (but excluding the ASBs); (3) change the permitted uses of the City Property or City

ROW occupied by the Project; (4) extend the term of this Agreement, or (5) modify this Agreement, including any individual ASB pertaining to a Fiscal Year (but not the sum of all ASBs collectively), to provide anticipated revenue to any City Agency of one million dollars or more, or require expenditure by any City Agency of ten million dollars. Any amendment or modification of this Agreement that is a Material Change must be approved by City's Board of Supervisors. The determination of whether a proposed change constitutes a Material Change will be made, on City's behalf, by the PW Director following consultation with the City Attorney and any affected City Agency.

- (d) Director of Public Works' Approval. The PW Director must also approve and any amendment or modification of this Agreement that is not an amended ASB or a new ASB. Any amendment that is a Material Change must be approved by the PW Director, the Board of Supervisors, and any affected City Agency.
- (e) TJPA Approval of Amendments. TJPA delegates authority to TJPA's Executive Director to make non-material amendments to this Agreement in writing, to add, delete, or modify the terms and conditions of such Appendices, and/or to add or delete Appendices, when necessary to accomplish the Parties' mutual goals, and so long as such amendment is consistent with Law and the TJPA Board's policy directions and budget authority.

16. Notices

Unless otherwise indicated elsewhere in this Agreement, any notice given under this Agreement must be in writing and will be deemed to have been given upon (a) hand delivery, against receipt, (b) one (1) day after being deposited with a reliable overnight courier service, or (c) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

To City: Carla Short
Interim Public Works Director
Department of Public Works
City Hall, Room 348
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: (415) 554-
carla.short@sfdpw.org

With a Copy to: Anne Taupier
Director of Development
c/o Leigh Lutenski, Project Manager
Office of Economic and Workplace Development
City Hall, Room 448
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: (415) 554-6614
Email: anne.taupier@sfgov.org and leigh.lutenski@sfgov.org

With a Copy to:

Office of the City Attorney
Attn: Finance & Real Estate Team
City Hall, Room 375
One Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone: (415) 554-4648
Email: elizabeth.dietrich@sfcityatty.org

To TJPA:

Adam Van de Water
Executive Director
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
Phone: (415) 597-4032
Email: avandewater@tjpa.org

With a copy to:

Deborah Miller, Legal Counsel
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Phone: (415) 552-7272
Email: miller@smwlaw.com

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the Parties, copies of notices may also be given by electronic mail, to the address listed above, or such other address as may be provided from time to time. However, neither Party may give official or binding notice by email. The effective time of a notice will not be affected by the receipt, prior to receipt of the original, of an emailed copy of the notice.

17. City and TJPA Requirements

- (a) California Political Reform Act. The Parties acknowledge that payments pursuant to this Agreement from TJPA to City are payments to City, not to any individual employee or officer of City, and that the payments therefore are not “income” to any City employee or officer under the California Political Reform Act, California Government Code section 81000, et seq.
- (b) Notification of Prohibition on Contributions. TJPA acknowledges its obligations under section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual

serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or a candidate for that office, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the contract is approved. TJPA acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. TJPA further acknowledges that (1) the prohibition on contributions applies to each prospective party to the contract; any person with an ownership interest of more than ten percent (10%) in TJPA; any subcontractor listed in the contract; and any committee that is sponsored or controlled by TJPA; and (2) within thirty (30) days of the submission of a proposal for the contract, City department with whom TJPA is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractors. Additionally, TJPA certifies that it will have, by the time it submitted a proposal for the contract, informed each such person of the limitation on contributions imposed by such section 1.126 and provided the names of the persons required to be informed to City department with whom it is contracting.

- (c) No Conflict of Interest. The Parties acknowledge that they are familiar with the provisions of section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certify that they do not know of any facts which would constitute a violation of said provision, and agree that if a party becomes aware of any such fact during the Term of this Agreement, such party will immediately notify the other party.
- (d) Sunshine Ordinance; Public Records Act. The Parties understand and agree that City's Sunshine Ordinance (S.F. Administrative Code Chapter 67) and the State Public Records Law (Gov't Code section 6250 et seq.) apply to this Agreement and any and all records and materials submitted to either Party in connection with this Agreement. In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement, or other benefit until and unless that person or organization is awarded the contract, lease, agreement, or benefit. Information provided that is covered by this Section will be made available to the public on request.
- (e) Non-Discrimination in City Contracts and Benefits Ordinance.
- (1) Covenant Not to Discriminate. In the performance of this Agreement, TJPA will not to discriminate against any employee of TJPA, any City employee working with TJPA, any applicant for employment with TJPA, or against any person seeking

accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of those protected classes, or in retaliation for opposition to discrimination against those classes.

(2) Subcontracts. TJPA will include in all subcontracts relating to the Agreement a non-discrimination clause applicable to the subcontractor in substantially the form of subsection (a) above. In addition, TJPA will incorporate by reference in all subcontracts the provisions of San Francisco Administrative Code Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 and require all subcontractors to comply with those provisions. TJPA's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(3) Non-Discrimination in Benefits. TJPA does not as of the date of this Agreement, and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits, or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing that registration, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2(b).

(4) CMD Form. As a condition to this Agreement, TJPA will execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division (the "CMD"). TJPA represents that before execution of the Agreement: (1) TJPA executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (2) the CMD approved the form.

(5) Incorporation of Administrative Code Provisions by Reference. The provisions of San Francisco Administrative Code Chapters 12B and 12C relating to non-discrimination by parties contracting with City are incorporated into this Section by reference and made a part of this Agreement as though fully set forth. TJPA will comply fully with and be bound by all of the provisions that apply to this Agreement under Administrative Code Chapters 12B and 12C, including the remedies provided in those Chapters. Without limiting the foregoing, TJPA understands that under San Francisco Administrative Code Section 12B.2(h) a penalty of Fifty Dollars (\$50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this Agreement may be assessed against TJPA and/or deducted from any payments due TJPA.

- (f) Government Code Claim Requirement. No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by the entity presented with the claim in conformity with the provisions of San Francisco Administrative Code Chapter 10 and Government Code section 900 et seq., except as otherwise provided by Law. Nothing set forth in this Agreement will operate to toll, waive, or excuse a Party's compliance with the Government Code claim requirements.
- (g) FTA Requirements. This Agreement is an intergovernmental agreement between two public agencies. To the extent the provisions of "USDOT Requirements for Agreement with the TJPA" ("**FTA Regulations**") apply to City as a party to this Agreement, the FTA Regulations are incorporated herein by reference. In the event of a conflict between the FTA Regulations and any other terms and conditions of this Agreement as between City and TJPA, the FTA Regulations will control, except that: (1) the dispute resolution and indemnity terms of this Agreement are controlling; and (2) nothing in the FTA Regulations will relieve TJPA of its obligation to pay for Eligible Costs as provided in this Agreement. When the City retains contractors after the Effective Date to perform City Tasks under this Agreement, the City will include applicable FTA Regulations if TJPA has notified the pertinent City Agency of such requirements in its ASB prior to procurement of the contract. For contracts entered into by City prior to the Effective Date, if TJPA requests that a City Agency modify a contract to include applicable FTA Regulations that City Agency's ASB, the City Agency will use good faith efforts to so modify the contract. If City is unable make the contract subject to the applicable Federal Regulations, TJPA will be required to contract for such undertakings.
- (h) Certification by TJPA. By executing this Agreement, TJPA certifies that neither TJPA nor any of its officers or members have been suspended, disciplined, or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. If TJPA or any of its officers or members have been suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify City of that fact and the reasons for the suspension, disbarment, discipline, or prohibition together with any relevant facts or information requested by City. If there is any suspension, disbarment, discipline, or prohibition that may result in the termination or suspension of this Agreement, City may terminate this Agreement on written notice to TJPA. TJPA acknowledges that this certification is a material term of this Agreement.
- (i) MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code Section 12F are incorporated into this Agreement by this reference and made part of this Lease. Landlord confirms that Landlord has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.
- (j) Certification of Funds.
 - (1) City Controller's Certification of Funds. The terms of this Agreement are governed by and subject to the budgetary and fiscal provisions of City's Charter.

Notwithstanding anything to the contrary contained in this Agreement, there will be no obligation for the payment or expenditure of money by City under this Agreement unless the Controller of City first certifies, under Section 3.105 of City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Agreement commences, sufficient funds for any payment are not appropriated, then City may terminate this Agreement, without penalty, liability, or expense of any kind to City, as of the last date on which sufficient funds are appropriated.

(2) TJPA's Certification of Funds. Notwithstanding anything to the contrary contained in this Agreement, there will be no obligation for the payment or expenditure of money by TJPA under this Agreement unless TJPA certifies that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. TJPA will include in each ASB a provision attesting that TJPA has executed a valid appropriation encumbering funds for an ASB equal to or exceeding the amount of the ASB.

18. General Conditions

- (a) Further Assurances. Each Party will execute and deliver to the other all such additional instruments or documents as may be necessary to carry out this Agreement, or to assure and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each Party's governing body.
- (b) Time is of the Essence. Time is of the essence for all provisions of this Agreement.
- (c) Regulatory Authority. TJPA has exclusive regulatory authority over the Project. TJPA understands and agrees that no approval by City for purposes of this Agreement may be deemed to constitute any approval required by any federal, state, regional or City authority acting in its regulatory capacity. TJPA will obtain any and all necessary permits and other regulatory approvals relating to the Project and will maintain such approvals as necessary throughout the Term. Promptly upon receipt of such approvals, TJPA will deliver copies to City. City will cooperate with TJPA to the extent necessary to obtain necessary approvals.
- (d) Non-Liability of Parties' Officials and Employees. No elected or appointed board, commission, member, officer, director, or employee, of either Party will be personally liable to the other Party, or any successor in interest, in the event of any default or breach of this Agreement, or for any amount which may become due on any obligation under this Agreement. This provision will survive termination or expiration of this Agreement.
- (e) No Joint Liability. Nothing in this Agreement may be construed as giving a Party the right or ability to bind the other Party and nothing in this Agreement may be construed to create any joint liability with regard to, or as a result of, the activities undertaken by the other Party or its Agents. All officers, directors, employees, representatives, and Agents

of a Party will remain the officers, directors, employees, representatives, and Agents of that Party and will be subject to the laws, procedures, rules, and policies governing such Party.

- (f) No Implied Waiver. No failure by either Party to insist on the strict performance of any obligation of the other Party under this Agreement or to exercise any right, power, or remedy after a breach of this Agreement will constitute a waiver of any breach or of term, covenant, or condition. No acceptance of full or partial payment by City while TJPA is in default will constitute a waiver of the default by TJPA. No express written waiver of any default or the performance of any provision if this Agreement will affect any other default or performance, or cover any other period of time, other than the default, performance, or time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Agreement will not be deemed to be a waiver of a subsequent default or performance. The consent of TJPA or City given in one instance under the terms of this Agreement will not relieve the other Party of any obligation to secure the consent to any other or future instance under the terms of the Agreement.
- (g) Applicable Law. This Agreement must be interpreted under and pursuant to the laws of the State of California and City's Charter. The Parties agree that the jurisdiction and venue of any dispute between the Parties will be the Superior Court of California of the County of San Francisco.
- (h) Severability. If any term, provision, covenant, or condition of this Agreement or its application to any person, entity, or circumstance is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, and conditions, or the application of the provision to persons, entities, or circumstances other than those to which it is invalid or unenforceable, will not be affected by that finding, and each other provision of this Agreement will be valid and enforceable to the full extent permitted by Law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of the Agreement.
- (i) Cumulative Remedies. All rights and remedies of either Party set forth in this Agreement are cumulative, except as otherwise specifically provided in this Agreement.
- (j) No Assignment. The Parties may not assign their rights or obligations under this Agreement except that TJPA may assign all or some of its rights or obligations to a successor governmental entity charged with financing, design, development, construction, or operation of the Transbay Program, but only with the prior written consent of City, which may be given or withheld in PW's sole discretion following consultation with all City Agencies.
- (k) Third Party Rights. Nothing herein may be considered as creating any rights and/or obligations by any of the Parties to this Agreement to any third parties, beyond those otherwise required and established by Law.

(l) Audit of Records. City agrees to maintain and make available to TJPA, during regular business hours, accurate books and accounting records relating to work under this Agreement. City will permit TJPA to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, and records related to work under this Agreement except for those that are attorney-client privileged communication or work product. City will maintain such data and records in keeping with its record retention policies. The State of California or any federal agency having an interest in the subject matter of this Agreement will have the same rights as conferred upon TJPA by this Section. This provision will survive termination or expiration of this Agreement.

(m) Interpretation. The following rules of construction apply to this Agreement:

(1) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word “include(s)” or “including” or similar words will not be construed to limit any general term, statement, or other matter in this Agreement or any of its attached exhibits, whether or not language of non-limitation are used. “Include(s)” means “include(s) without limitation” and “include(s) but not limited to,” and the word “including” means “including without limitation” and “including but not limited to” as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a Party mean the named Party and its successors and assigns. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time. The Parties’ exercise of discretion will be reasonable unless stated otherwise.

(2) Headings are for convenience only and do not define or limit any terms. References to a specific document or exhibit mean the document, together with all exhibits, appendices, and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated. All exhibits, appendices, and schedules to this Agreement are hereby made a part of this Agreement.

(3) This Agreement (including all of the attached appendices and exhibits, which are made a part of this Agreement by this reference) represents the full, complete, and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings, or agreements, whether written or oral, between the Parties with respect to such subject matter.

(4) This Agreement has been drafted through a cooperative effort of City and TJPA, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party will be considered the drafter of this Agreement, and no presumption or rule that an ambiguity be construed against the Party drafting the clause will apply to the interpretation or enforcement of this Agreement.

- (n) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute a single agreement. A signature delivered on any counterpart by facsimile or other electronic means will for all purposes be deemed to be an original signature to this Agreement. The term “electronic means” means one that is executed by applying an electronic signature using technology mutually acceptable to the Parties.

- (o) Effective Date. The “**Effective Date**” of this Agreement is the date on which all of the following have occurred: (1) City and TJPA have executed this Agreement; (2) a resolution or ordinance, as applicable, is enacted by the City's Board of Supervisors and Mayor approving and authorizing this Agreement at each of their sole discretion; and (3) a resolution is enacted by TJPA’s Board of Directors approving and authorizing this Agreement at their sole discretion, in accordance with Law.

[SIGNATURES ON FOLLOWING PAGE]

4-18-23

This Agreement is made and entered into as of the date set forth above.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

TRANSBAY JOINT POWERS, a joint exercise of powers authority

By: _____
Carla Short
Interim Public Works Director

By: _____
Adam Van de Water
Executive Director

San Francisco Board of Supervisors
Resolution No. _____

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest: _____

Secretary, TJPA Board

APPROVED AS TO FORM FOR CITY:

APPROVED AS TO FORM FOR TJPA:

DAVID CHIU, City Attorney

By: _____
Elizabeth A. Dietrich
Deputy City Attorney

By: _____
Deborah Miller
Legal Counsel

CONSENT TO INTERAGENCY COOPERATION AGREEMENT
[Department Name]

The _____ of the City and County of San Francisco (“**Department**”) has reviewed the Interagency Cooperation Agreement between the Transbay Joint Powers Authority and the City and County of San Francisco Relating to the Downtown Rail Extension Project (as amended from time to time, the “**Interagency Cooperation Agreement**”) to which this Consent to Interagency Cooperation Agreement (this “**Agency Consent**”) is attached. Except as otherwise defined in this Agency Consent, initially capitalized terms have the meanings given in the Interagency Cooperation Agreement.

By executing this Agency Consent, the undersigned confirms that the Department, after considering at a duly noticed public hearing the Interagency Cooperation Agreement, if and as necessary, consents to:

1. The Interagency Cooperation Agreement as it relates to matters under Department jurisdiction.
2. Subject to TJPA satisfying the Department’s requirements for construction operation and maintenance that are consistent with the Interagency Cooperation Agreement and the plans and specifications approved by the Department in accordance with the terms of the Interagency Cooperation Agreement, the Department’s accepting and then, subject to appropriation, operating and maintaining Department-related infrastructure.
3. Authorizing the Department General Manager to implement the Interagency Cooperation Agreement on Department’s behalf, and to execute ASBs relating to particular Fiscal Years, as such terms are defined in the Interagency Cooperation Agreement.

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, acting by and through the

By: _____

NAME, TITLE

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____

Deputy City Attorney

4-18-23

- Appendix A City Right-of-Way
- Appendix B Annual Scopes & Budgets (ASBs)
- Appendix C Mitigation Monitoring and Reporting Program (MMRP)
- Exhibit 1 Map of City Property

APPENDIX A **CITY RIGHT-OF-WAY**

This Appendix A is attached to and made a part of the Interagency Cooperation Agreement between the Transbay Joint Powers Authority and the City and County of San Francisco Relating to Phase 2 of the Transbay Program (the “**Agreement**”). The Project will connect Caltrain’s regional rail system and the California High-Speed Rail Authority’s statewide system to the Salesforce Transit Center in downtown San Francisco.

Definitions and rules of interpretation set forth in the main body of the Agreement apply to this Appendix A. In the event of any inconsistency between the main body of the Agreement and this Appendix A, the main body of the Agreement will control. This Appendix A describes the anticipated documentation and necessary actions and approvals for City’s anticipated street vacation and conveyance of subsurface easements to TJPA in furtherance of the Project, which is subject to change by City in its discretion, and does not obligate any City Agency to act and does not imply that the necessary documentation, actions, or approvals will not change.

I. PROJECT

The Project will connect Caltrain’s regional rail system and the California High-Speed Rail Authority’s statewide system to the Salesforce Transit Center in downtown San Francisco. The rail alignment will be constructed principally below grade to provide a critical link for Peninsula commuters and travelers on the state’s future high-speed rail system. A more detailed summary of the Project alignment and the main elements of the Project are provided in the main body of the Agreement. The elements of the Project are subject to change and refinement.

The Project’s alignment begins in the below-grade Salesforce Transit Center. At the west end of the station, the station’s six tracks transition to two tracks through a throat structure and continue in a tunnel southward under Second Street and westward under Townsend Street to a new underground station at Fourth Street and Townsend Street. West of the Fourth and Townsend station, near Seventh Street and Townsend Street, the tracks ascend to grade via a u-shaped retained cut (referred to as the “u-wall”). Near Townsend and Sixth Street, the Project includes a tunnel stub box extending side-by-side with the u-wall. From the u-wall, additional trackage (maintenance of way and turnback track) continues southward at-grade to Sixteenth Street. Including below-grade and at-grade trackwork and stations, the total construction length of the Project is approximately 2.1 miles.

The Project will be located on real property that is currently owned or controlled by various entities, including TJPA, the State of California, private parties, Caltrain, City, and City through the San Francisco Port Commission, pursuant to the Public Trust.

II. CITY ROW

“**City ROW**” means the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, spaces, streets, and ways

within City, or which are or will be under the permitting jurisdiction of PW, as well as any such right-of-way under the jurisdiction of the Port, SFMTA, or the Office of Community Investment and Infrastructure.

Because the Project is planned to be located within certain City ROW, TJPA has proposed that City grant certain rights and interests to TJPA to occupy and use such City ROW, which may include temporary agreements, licenses, or permits for construction of the Project, and easements subject to City's right to terminate or permits necessary for TJPA's construction and operation of the Project.

In accordance with the Agreement, City will use good faith efforts to process applications for City ROW vacations and/or occupancy, to proceed with its work facilitating the Project in a timely manner, and to meet necessary timelines for the Project to proceed efficiently.

A. Proposed Permanent Occupancy of City ROW.

TJPA plans to request that City vacate certain sub-surface portions of City ROW where certain Project Improvements will be located following the procedures set forth in the Streets & Highways Code section 8300 et seq., particularly the general street vacation procedures set forth in Streets & Highways Code sections 8320-8325, and City Public Works Code Section 787, and grant an easement in such property to TJPA for the Project, subject to City's right to terminate the easement if 1) the easement is no longer necessary for the Project, 2) Project is not completed after twenty (20) years from the Effective Date, or 3) TJPA ceases use of the easement for longer than ten (10) years after completion of the Project. TJPA's surface fixtures and improvements required for the Project and located on City ROW or City Property will require permits, permissions, encroachment or other permits, and/or licenses granted by City. City and TJPA expect that City will maintain all rights to use and occupy the surface of City Property and that pedestrian and vehicular access to the City ROW will remain unimpeded, except that during construction of the Project such rights may be temporarily impacted.

B. Proposed City ROW Vacation Parcels.

TJPA plans to request that City vacate and convey to TJPA easements over the portions of City ROW, subject to City's right to terminate described in Section II(A) above, as generally described below (collectively, the "**Proposed ROW Vacation Parcels**"):

- 1) subsurface area located approximately Seventeen (17) feet below the surface of Beale Street, for the train box extension portion of the TJPA Improvements, as generally illustrated in the attached Exhibit 1, sheet 1;
- 2) subsurface area located approximately Seventeen (17) feet to Thirty-Six (36) feet below the surface of Natoma, Howard, Second, Tehama, and Clementina Streets, for the throat structure portion of the TJPA Improvements, as generally illustrated in the attached Exhibit 1, sheet 2;
- 3) subsurface area located approximately Thirty-Six (36) feet to Seventy (70) feet below the surface of Second Street, for the rail tunnel portion of the

TJPA Improvements, including subsurface area at the northeast corner of Folsom Street and Brannan Street for signal alcoves approximately Seventy (70) feet below the surface, as generally illustrated in the attached Exhibit 1, sheets 2 and 3;

- 4) subsurface area located approximately Fifty-Eight (58) feet below the surface of Stanford Street, for the rail tunnel portion of the TJPA Improvements, as generally illustrated in the attached Exhibit 1, sheet 3;
- 5) subsurface area located approximately Thirty-Seven (37) feet to Five (5) feet below the surface of Townsend Street, for the rail tunnel portion of the TJPA Improvements, as generally illustrated in the attached Exhibit A-1, sheet 3; and
- 6) surface area located at grade on the surface of Berry Street, for the u-wall portion of the TJPA Improvements, as generally illustrated in the attached Exhibit 1, sheet 4.

C. Proposed Vacation of City ROW.

The process for TJPA to request the vacation and conveyance of the Proposed ROW Vacation Parcels will comply with City Code, including Charter Section 4.105, Administrative Code Section 2A.53, and Public Works Code Section 787 and all applicable state statutes. The process for the vacation of City ROW, which is provided solely for illustrative purposes and is subject to change, is currently generally as outlined below:

- 1) Petition/Application: TJPA will submit all application materials necessary to request a street vacation to PW, which will include requesting a General Plan Referral for street vacation of Proposed ROW Vacation Parcel(s).
- 2) General Plan and Planning Code: City Planning Commission or Department considers adopting a motion or determination, finding the street vacation(s) of the Proposed ROW Vacation Parcel(s) in conformity with General Plan and eight priority policies in Planning Code Section 101.1.
- 3) Redevelopment Plan: Where the Proposed ROW Vacation Parcels are within the jurisdiction of the Office of Community Investment and Infrastructure (“OCII”), OCII considers preparing a letter to City Planning Commission or Department, confirming that the street vacation(s) of the Proposed ROW Vacation Parcel(s) is consistent with the Transbay Redevelopment Plan.
- 4) Adjacent Property Owner Notice: PW, or TJPA, as authorized by PW, sends notice of proposed street vacation to adjoining property owners of Proposed ROW Vacation Parcel(s); PW will share adjoining property owner questions or comments with TJPA and may confer with TJPA in preparing responses or proposed resolutions of questions or comments if requested by TJPA, and may require TJPA to prepare responses or proposed resolutions of questions and comments.

- 5) Utility Relocation: TJPA prepares a memo to PW summarizing utility relocation plans as directed by PW; PW sends notice(s) of proposed street vacation to affected utilities and provides opportunity to comment; TJPA, with support/oversight from PW, responds to questions or comments.
- 6) Map: PW prepares SUR maps, supported, as necessary or preferred, by TJPA's surveyor, describing area of Proposed ROW Vacation Parcel(s).
- 7) Valuation and Determination: San Francisco Real Estate Division ("RED") prepares a memo describing its opinion of value for the Proposed ROW Vacation Parcels. RED's valuation may consider the benefits expected to accrue to City as a result of the Project. An appraisal, and potentially an appraisal review, is required if the valuation is over \$10,000 unless the BOS excuses that requirement by ordinance.
- 8) Public Works Order: PW Director considers issuing an order recommending that the BOS conditionally vacate the Proposed ROW Vacation Parcel(s) based on the findings required under state and local laws, subject to conditions such as the following: (i) the property may only be used for the Project; (ii) the property cannot be conveyed to another party except to a successor governmental entity that will operate the Project; (iii) if TJPA ceases its use of the property for more than ten (10) years after completion of the Project or does not complete construction within twenty (20) years from the Effective Date of this Agreement, City may exercise a right to terminate the easement(s) conveyed to TJPA; (iv) if the easement(s) are terminated, the Proposed ROW Vacation Parcel(s) will cease to be vacated and revert back to City ROW; and (v) any other conditions that PW Director deems necessary.
- 9) Board of Supervisors Resolution: A Committee of the BOS considers recommending a resolution, declaring its intention to vacate the Proposed ROW Vacation Parcel(s); the BOS considers adopting a resolution declaring its intention to vacate the Proposed ROW Vacation Parcel(s); resolution is posted and published as required by law. The BOS holds a hearing on the vacation of the Proposed ROW Vacation Parcel(s).
- 10) Board of Supervisors Ordinance: The BOS considers adopting an ordinance, ordering the vacation of the Proposed Vacation ROW Parcel(s), and approving the grant of an easement interest in the Proposed ROW Vacation Parcel(s) to TJPA (subject to conditions as recommended by PW Director or determined by the BOS). Approval of the ordinance requires two readings.
- 11) Easement Conveyance: Following the effective date of the BOS Ordinance, RED implements BOS Ordinance.

D. Proposed Temporary Occupancy of City ROW

Construction of the Project will require temporary use and occupancy of certain City ROW and/or City Property for staging or construction-related purposes, for which TJPA will comply with all City Codes.

E. Trust Parcels

Certain of the Proposed ROW Vacation Parcels are under the jurisdiction of the Port and are subject to the Public Trust. Transfer of easements in those parcels free of the Public Trust will require that TJPA first obtain authorization from the State of California to remove the Public Trust from such parcels prior to BOS action to vacate or grant an interest in them. In addition, the State of California also may require an exchange where the Public Trust is removed from certain Proposed Vacation ROW Parcel(s) where the City would grant an easement interest in the Proposed ROW Vacation Parcel(s) to TJPA and the Public Trust is applied to other City Property.

APPENDIX B
ANNUAL SCOPES AND BUDGETS (ASBs)

This Appendix B, including its subagreements (each subagreement, an “**Annual Scope & Budget**” or “**ASB**”), is attached to and made a part of the Interagency Cooperation Agreement between the Transbay Joint Powers Authority and the City and County of San Francisco Relating to the Downtown Rail Extension Project (the “**Agreement**”) relating to Phase 2 of the Transbay Program, the Downtown Rail Extension Project. The Project will connect Caltrain’s regional rail system and the California High-Speed Rail Authority’s statewide system to the Salesforce Transit Center in downtown San Francisco.

Definitions and rules of interpretation set forth in the main body of the Agreement apply to each ASB unless otherwise specified in an ASB. Unless specifically provided otherwise in a particular City Agency’s ASB, each ASB incorporates the general terms of the body of the Agreement as between TJPA and that City Agency. The ASB subagreements are:

- Appendix B-1 Port of San Francisco
- Appendix B-2 San Francisco Department of Building Inspection
- Appendix B-3 San Francisco Department of Technology
- Appendix B-4 San Francisco Fire Department
- Appendix B-5 San Francisco Municipal Transportation Agency
- Appendix B-6 San Francisco Office of Economic and Workforce Development
- Appendix B-7 San Francisco Planning Department
- Appendix B-8 San Francisco Public Utilities Commission
- Appendix B-9 San Francisco Public Works
- Appendix B-10 San Francisco Real Estate Division

Each subagreement details that City Agency’s expected City Tasks and budget for those tasks under the Agreement for a particular Fiscal Year.

The Project will be advanced over the course of several years, and TJPA and City expect the scope of City Tasks provided by City Agencies pursuant to the Agreement to change and adjust over time. TJPA and City intend for the Agreement and ASBs to provide a flexible mechanism that will accommodate the evolving City Tasks that will be undertaken by City for the Project as the Project advances. Therefore, the Agreement is structured to: (1) provide a consistent set of general terms to govern the City Tasks, which terms are set forth in the body of the Agreement; (2) provide a mechanism for annual budgeting and agreement on scope of City Tasks undertaken by City Agencies each year; (3) provide a mechanism for reimbursement of Eligible Costs in connection with the City Tasks; and (4) provide clarity and flexibility regarding the approval process for amendments to the Agreement, and for amendments and replacements of the ASBs.

The Agreement contemplates that this Appendix B may be amended, additional City Agencies may approve the Agreement and have new ASBs, and each City Agency’s ASB will be replaced each Fiscal Year in the manner set forth in the body of the Agreement. TJPA and each City Agency will follow the budgetary process described in Section 8(d) of the Agreement to revise that City Agency’s ASB each Fiscal Year, unless otherwise specified in that City Agency’s ASB. TJPA will reimburse each City Agency for its Eligible Costs in accordance with Section 8 of the Agreement.

4-18-23

TJPA's obligation to pay Eligible Costs will not exceed the amounts agreed upon in the ASBs each Fiscal Year except as provided in Section 8 of the Agreement. Each City Agency may suspend or discontinue that City Agency's ongoing City Tasks under its ASB and the Agreement if its budget is exceeded in accordance with Section 3(c) of the Agreement, and each City Agency may elect not to enter into an ASB for a particular Fiscal Year, such that its City Tasks pursuant to an ASB may expire. Each City Agency's individual ASB incorporates the general terms of the body of the Agreement except as may be otherwise specifically provided in its ASB. Each City Agency's annual ASB will not require the approval of City's Board of Supervisors except as part of the approval of the City Agency's annual budget process, or if such ASB constitutes a Material Change pursuant to Section 15 of the Agreement

4-18-23

**APPENDIX B-[]
ANNUAL SCOPE & BUDGET (ASB)**

[CITY DEPARTMEBT ASB]

4-18-23

APPENDIX C
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/
REDEVELOPMENT PROJECT
MITIGATION MONITORING AND REPORTING PROGRAM

IMPLEMENTATION

While the Mitigation Monitoring Program generally outlines the actions, responsibilities and schedule for mitigation monitoring, it does not attempt to specify the detailed procedures to be used to verify implementation (e.g., interactions between the Project Sponsor – the Transbay Joint Powers Authority, the San Francisco Redevelopment Agency and City departments, use of private consultants, signed-off on plans, site inspections, etc.). Specific monitoring procedures are either contained in approval documents or will be developed at a later date, closer to the time the mitigation measures will actually be implemented.

The majority of the measures will be monitored primarily by the Transbay Joint Powers Authority (TJPA), in consultation with other City and non-City agencies, as part of the site permit, building permit processes or other report.

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Wind				
W 1 – Consider potential wind effects of an individual project for the Redevelopment area. If necessary, perform wind tunnel testing in accordance with City Planning Code Section 148. If exceedences of the wind hazard criterion should occur for any individual project, require design modifications or other mitigation measures to mitigate or eliminate these exceedences. Tailor mitigation measures to the individual needs of each project. Examples of mitigation measures include articulation of building sides and softening of sharp building edges.	San Francisco Redevelopment Agency (Agency)	During environmental review process preceding approval of each individual project in Transbay Redevelopment Area	Agency	Apply project review procedures for wind when projects are developed by or proposed to Agency.
Property Acquisition/Relocation				
Prop 1 – Apply federal Uniform Relocation Act (Public Law 91 646) and California Relocation Act (Chapter 16, Section 7260 et seq., of the Government Code) and related laws and regulations governing both land acquisition and relocation. All real property to be acquired will be appraised to determine its fair market value before an offer is made to each property owner. (Minimum relocation payments are detailed in the laws, and include moving and search payments for businesses.) Provide information, assistance, and payments to all displaced businesses in accordance with these laws and regulations.	City and County of San Francisco (CCSF), Agency, and TJPA	Prior to and during property acquisition and relocation activities	TJPA	TJPA to report to Board on compliance during acquisition and relocation activities.
Safety and Emergency Services				
Saf 1 – Provide project plans to the San Francisco Fire Department for its review to ensure that adequate life safety measures and emergency access are incorporated into the design and construction of Project facilities.	Transbay Joint Powers Authority (TJPA)	Prior to project facility permitting and during construction	TJPA	Project facility plans to be forwarded to CCSF Fire Department prior to permit issuance. Inspect installation during construction.
Noise – Operations (none)				
Noise – Construction				
NoiC 1 – Comply with San Francisco noise ordinance. The noise ordinance includes specific limits on noise from construction. The basic requirements are: • Maximum noise level from any piece of powered construction equipment is limited to 80 dBA at 100 feet. This translates to 86 dBA at 50 feet.	TJPA	During preparation of construction contract document	TJPA	TJPA to work with CCSF Department of Public Works (DPW) regarding construction

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<ul style="list-style-type: none"> Impact tools are exempted, although such equipment must be equipped with effective mufflers and shields. The noise control equipment on impact tools must be as recommended by the manufacturer and approved by the Director of Public Works. Construction activity is prohibited between 8 p.m. and 7 a.m. if it causes noise that exceeds the ambient noise plus 5 dBA. 		s and construction		noise mitigation program.
<p>The noise ordinance is enforced by the San Francisco DPW, which may waive some of the noise requirements to expedite the project or minimize traffic impacts. For example, along Townsend Street where much of the land use is commercial, business owners may prefer nighttime construction since it would reduce disruption during normal business hours. The DPW waivers usually allow most construction processes to continue until 2 a.m., although construction processes that involve impacts are rarely allowed to extend beyond 10 p.m. This category would include equipment used in demolition such as jackhammers and hoe rams, and pile driving. It is not anticipated that the construction documents would have specific limits on nighttime construction. There may be times when nighttime construction is desirable (e.g., in commercial districts where nighttime construction would be less disruptive to businesses in the area) or necessary to avoid unacceptable traffic disruptions. Since the construction would be subject to the requirements of the San Francisco noise regulations, in these cases, the contractor would need to work with the DPW to come up with an acceptable approach balancing interruption of the business and residential community, traffic disruptions, and reducing the total duration of the construction.</p>				
<p>NoiC 2 – Conduct noise monitoring. The purpose of monitoring is to ensure that contractors take all reasonable steps to minimize noise.</p>	TJPA	During construction	TJPA	Monitoring data to be provided to CCSF DPW.
<p>NoiC 6 – Include noise control requirements in construction specifications. These should require the contractor to</p> <ul style="list-style-type: none"> Perform all construction in a manner to minimize noise. The contractor should be required to select construction processes and techniques that create the lowest noise levels. Examples are using predrilled piles instead of impact pile driving, mixing concrete offsite instead of onsite, and using hydraulic tools instead of pneumatic impact tools. Use equipment with effective mufflers. Diesel motors are often the major noise source on construction sites. Contractors should be required to employ equipment fitted with the most effective commercially available mufflers. 	TJPA	Final design and construction	TJPA	TJPA to develop detailed noise control requirements during preliminary engineering and final design. Ensure contractor obtains permits if necessary. Inspect construction activities for compliance and

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<ul style="list-style-type: none"> • Perform construction in a manner to maintain noise levels at noise sensitive land uses below specific limits. • Perform noise monitoring to demonstrate compliance with the noise limits. Independent noise monitoring should be performed to check compliance in particularly sensitive areas. • Minimize construction activities during evening, nighttime, weekend and holiday periods. Permits would be required before construction can be performed in noise sensitive areas during these periods. • Select haul routes that minimize intrusion to residential areas. This is particularly important for the trench alternatives that will require hauling large quantities of excavation material to disposal sites. <p>Controlling noise in contractor work areas during nighttime hours is likely to require some mixture of the following approaches:</p> <ul style="list-style-type: none"> • Restrictions on noise producing activities during nighttime hours. • Laying out the site to keep noise producing activities as far as possible from residences, to minimize the use of backup alarms, and to minimize truck activity and truck queuing near the residential areas. • Use of procedures and equipment that produce lower noise levels than normal. For example, some manufacturers of construction equipment can supply special noise control kits with highly effective mufflers and other materials that substantially reduce noise emissions of equipment such as generators, tunnel ventilation equipment, and heavy diesel power equipment including mobile cranes and front-end loaders. • Use of temporary barriers near noisy activities. By locating the barriers close enough to the noise source, it is possible to obtain substantial noise attenuation with barriers 10 to 12 feet high even though the residences are 30 to 40 feet higher than the construction site. • Use of partial enclosures around noisy activities. It is sometimes necessary to construct shed-like structures or complete buildings to contain the noise from nighttime activities. 				<p>monitor noise levels. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as CCSF Department of Parking and Traffic (DPT) and DPW.</p>
Vibration – Operations				
<p>Vib01 – Use high-resilience track fasteners or a resiliently supported tie system for the Caltrain Downtown Extension for areas projected to exceed vibration criteria, including the following locations: (1) Live/Work condos, 388 Townsend Street (Hubbell and Seventh), (2) San</p>	TJPA	During preliminary engineering, final	TJPA	TJPA to develop locations/use of resilience track fasteners or resiliently

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>Francisco Residences on Bryant (Harrison Parking Lot Site), (3) Clock Tower Building, and Second Street High Rise and (4) new Marriott Courtyard (Marine Firefighter's Union).</p>		<p>design and construction</p>		<p>supported tie system during preliminary engineering and final design. Review construction documents and inspect installation. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as CCSF Department of Building Inspection (DBI) and DPW.</p>
<p>Vibration – Construction</p>				
<p>VibC 1 – Limit or prohibit use of construction techniques that create high vibration levels. At a minimum, processes such as pile driving would be prohibited at distances less than 250 feet from residences.</p>	<p>TJPA</p>	<p>During preliminary engineering, final design and construction</p>	<p>TJPA</p>	<p>TJPA to ensure preliminary design, final design and contract documents preclude use of pile driving equipment within 250 feet of residences. Construction management and inspection will monitor contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.</p>

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>VibC 2 – Restrict procedures that contractors can use in vibration sensitive areas. (It is often possible to employ alternative techniques that create lower vibration levels. For example, unrestricted pile driving is one activity that has considerable potential for causing annoying vibration. Using the cast-in-drilled-hole piling method instead will eliminate most potential for vibration impact from the piling.)</p>	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to establish construction vibration design standards during final design. Include provisions in contract documents and monitor contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
<p>VibC 3 – Require vibration monitoring during vibration intensive activities.</p>	TJPA	During construction	TJPA	TJPA to include provisions for vibration monitoring in construction contract documents or perform monitoring under a separate contract. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
<p>VibC 5 – Investigate alternative construction methods and practices to reduce the impacts in coordination with the construction contractor if resident annoyance from vibration becomes a problem.</p>	TJPA	During final design and during construction	TJPA	TJPA to include provisions in contract documents and monitor contractors' activities to ensure compliance.

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>VibC 6 – Include specific limits, practices and monitoring and reporting procedures for the use of controlled detonation. Control and monitor use of controlled detonation to avoid damage to existing structures. Include specific limits, practices, and monitoring and reporting procedures within contract documents to ensure that such construction methods, if used, would not exceed safety criteria.</p>	TJPA	During final design and during construction	TJPA	<p>Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.</p> <p>TJPA to establish detailed limits, practices, and monitoring program for controlled detonation during final design. Include provisions in contract documents and monitor contractors' activities to ensure compliance.</p> <p>Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.</p>
Soils/Geology				
<p>SG 1 – Monitor adjacent buildings for movement, and if movement is detected, take immediate action to control the movement.</p>	TJPA	During construction	TJPA	<p>TJPA to include provisions in contract documents requiring such monitoring and corrective measures and inspect contractors' activities to ensure compliance.</p> <p>Where</p>

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>SG 2 – Apply geotechnical and structural engineering principles and conventional construction techniques similar to the design and construction of high-rise buildings and tunnels throughout the downtown area. Apply design measures and utilize pile-supported foundations to mitigate potential settlement of the surface and underground stations.</p>	TJPA	During preliminary engineering and final design	TJPA	<p>applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.</p> <p>TJPA to review design and contract documents to ensure implementation. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.</p>
<p>SG 3 – Design and construct structural components of the project to resist strong ground motions approximating the maximum anticipated earthquake (0.5g). The cut-and-cover portions will require pile supports to minimize non-seismic settlement in soft compressible sediments (Bay Mud). The underground Caltrain station at Fourth and Townsend will require pile-supported foundations due to the presence of underlying soft sediments.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	<p>TJPA to design structural components to meet seismic standards during preliminary engineering and final design. Review design, contract documents and construction activities to ensure implementation. Where applicable, coordinate with JPB and CCSF departments with jurisdiction over activities, such as DBI and DPW.</p>
<p>SG 4 – Underpin existing building, where deemed necessary, to protect existing structures from potential damage that could result from excessive ground movements during construction. Design the tunneling and excavation procedures (and construction sequence), and</p>	TJPA	During preliminary engineering, final	TJPA	<p>TJPA to design tunneling, excavation procedures, underpinning,</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>design of the temporary support system with the objective of controlling ground deformations within small enough levels to avoid damage to adjacent structures. Where the risk of damage to adjacent structures is too great, special measures will be implemented such as: (1) underpinning, (2) ground improvement, and/or (3) strengthening of existing structures to mitigate the risks.</p> <p>Underpinning may include internal strengthening of the superstructure, bracing, reinforcing existing foundations, or replacing existing foundations with deep foundations embedded outside the tunnel zone of influence. Alternatives, in lieu of underpinning, involve strengthening the rock between the building and crown of tunnel. Grouting in combination with inclined pin piles can be used not only to strengthen the rock, but also make the rock mass over the tunnel act as a rigid beam, allowing construction of tunnels with no adverse effects on the buildings supported on shallow foundations over the tunnel.</p>		design and construction		<p>strengthening existing structures or ground improvement to protect existing structures from damage. Include provisions in contract documents requiring contractors to implement measures during construction. Monitor construction activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.</p>
<p>SG 5 – TJPA shall assure proper design and construction of pile-supported foundations for structures to control potential settlement of the surface. Stability of excavations and resultant impacts on adjacent structures can be controlled within tolerable limits by proper design and implementation of the excavation shoring systems.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	<p>TJPA to ensure foundations and excavation shoring systems are designed and constructed to minimize and control settlement and impacts on adjacent structures. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>New-MM-C-GE-4.1 – Groundwater Control during Construction. Groundwater control shall be implemented to reduce ground instability in the construction area, where excavations encroach into the prevailing groundwater table.</p> <ul style="list-style-type: none"> • For excavations with the cut-and-cover technique, the groundwater level within the footprint of the excavation shall be maintained a minimum of 2 feet or more beneath the bottom of the excavation throughout construction to minimize the potential for failure of the base of the excavation due to high groundwater seepage at construction sites. The groundwater level outside of the excavation footprint shall remain unchanged. <u>Groundwater levels outside the excavation shall be controlled so that they do not induce damage to surrounding structures or infrastructure beyond that which can be described as “slight” as defined in Table 1–Classification of Visible Damage to Walls with Particular Reference to Ease of Repair of Plaster and Brickwork or Masonry (Son and Cording 2005). Slight damage is characterized by visible cracks (1–5 mm) that can be filled easily, may require some repointing to ensure weathertightness, and with redecoration probably required.</u> • For excavations with the SEM construction method in rock, groundwater intrusion into the tunnel excavation is expected to be minimal and localized at joints in the rock. Groundwater seeping into the excavation shall be controlled locally by panning and piping channel inflows to sump pumps located in the portal area. • For excavations with the SEM construction method in soft ground conditions (i.e., sands and clays), the groundwater level shall be locally drawn down to below the bottom of the excavation in order to increase the strength of the ground and reduce potential ground instability. 	TJPA	During construction	TJPA	<p>TJPA to design DTX facilities to protect structures from damage related to high seepage gradients. Include provisions in contract documents requiring contractors to implement measures during construction. Monitor construction activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities.</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Utilities				
<p>Util 1 – Coordinate with utility providers during preliminary engineering, continuing through final design and construction. Utilities would be avoided, relocated, and/or supported as necessary during construction activities to prevent damage to utility systems and to minimize disruption and degradation of utility service to local customers. (Noted because of SFPUC)</p>	TJPA	During preliminary engineering, final design and construction	TJPA	<p>TJPA to identify utilities; design relocations or protection measures where required; and include requirements in contract documents. Monitor construction activities to ensure implementation of all required measures.</p>
Cultural and Historic Resources				
<p>CH 11 – Develop and implement measures, in consultation with the owners of historic properties immediately adjoining the construction sites, to protect the contributing elements of the Second and Howard Streets Historic District and the Rincon Point/South Beach Historic Warehouse Industrial District from damage by any aspect of the Project. Such measures will include, but are not necessarily limited to those identified in the MOA.</p> <p>The protective measures herein stipulated will be developed and implemented by TJPA prior to the commencement of any aspect of the Project that could have an adverse effect on historic properties immediately adjoining the construction sites herein identified. In addition, TJPA will monitor the effectiveness of the protective measures herein stipulated and will supplement or modify these measures as and where necessary in order to ensure that they are effective. The historic properties covered by the terms of this paragraph are:</p> <ul style="list-style-type: none"> • 589-591 Howard Street/3736-098, NRHP Status: 1D, Contributing Element of Second & Howard District & New Montgomery/Second Street, Const. Date: 1906, Type of Impact: Cut-and-cover construction; need easement. • 163 Second Street/3721-048, NRHP Status: 1D, Contributing Element of Second & Howard District & New Montgomery/Second Street, Const. Date: 1907, Type of Impact: Cut-and-cover construction nearby. • 165-173 Second Street/3721-025, NRHP Status: 1D, Contributing Element of Second & Howard District & New Montgomery/Second Street, Const. Date: 1906, 	TJPA	During preliminary engineering, final design, and construction	TJPA	<p>TJPA will contact owners of record of historic properties that will be affected (but that will not be acquired and demolished) by the Project. TJPA will provide and review this mitigation monitoring program with the owners via correspondence and/or public and face-to-face meetings. TJPA will coordinate these efforts with the CCSF Planning Department prior to commencement of any aspect of the project that could have any adverse effect on historic</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Type of Impact: Cut-and-cover construction; need easement.				properties immediately adjoining the construction sites herein identified.
<ul style="list-style-type: none"> 166-78 Townsend Street/3788-012, NRHP Status: 3D Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1910 [1], 1988 [2], Type of Impact: Cut-and-cover construction nearby. Need construction easement. 				TJPA will monitor the effectiveness of the protective measures and will supplement or modify these measures as and where necessary in order to ensure that they are effective.
<ul style="list-style-type: none"> 640-Second Street/3788-002, NRHP Status: 252, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1926, Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 650 Second Street/3788-049 through 3788-073, NRHP Status: 252, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 670-680 Second Street/3788-043, 3788-044, NRHP Status: 252 (670), 3D (680), Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1913, Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 301-321 Brannan Street/3788-037, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1909, Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 130 Townsend Street/3788-008, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1910 [1], 1895-6 [2], Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 136 Townsend Street/3788-009, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1902 [1], 1913 [2], Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 144-46 Townsend Street/3788-009A, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 148-54 Townsend Street/3788-010, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property. 				
<ul style="list-style-type: none"> 162-164 Townsend Street/3788-081, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1919, Type of Impact: Tunnel under or near property. 				

Notes: National Register Status Codes are as follows:

1 – Listed on the NRPH

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
251 – Determined eligible for listing by the Keeper of the Register				
252 – Determined eligible for listing by the consensus of the SHPO and federal agency				
1D – Listed on the National Register as a contributor to a district or multi-resource property				
<p>CH 14 – Within 180 days after FTA determines that the Project has been completed, TJPA, in consultation with FTA and SHPO, will re-evaluate the Second and Howard Streets Historic District and determine whether the National Register nomination should be amended or whether the district no longer qualifies for listing and should be removed from the National Register. As appropriate, TJPA will prepare and submit to the FTA and SHPO either an amended nomination or petition for removal, to be processed according to the procedures set forth in 36 CFR Part 60 (60.14 and 60.15).</p>	TJPA	Within 180 days after FTA determines that the Project has been completed	TJPA	<p>As appropriate, TJPA will prepare and submit to the FTA and SHPO either an amended nomination or petition for removal, to be processed according to the procedures set forth in 36 CFR part 60 (60.14 and 60.15). TJPA will coordinate these efforts with the CCSF Planning Department.</p>
<p>CH 15 – Within 45 days following execution of MOA, consult with FTA, SHPO, JPB and CCSF to initiate the process of determining how archaeological properties that may be affected by the Project will be identified, whether and how the NRHP eligibility of such properties may be addressed, and whether and how the Project's effects, if any, on those archaeological properties that may be considered historic properties for purposes of this MOA, may be taken into account. FTA and TJPA to invite Caltrans to participate in this consultation. Determine the time frame for this consultation with the consulting parties through consensus.</p>	TJPA	During preliminary engineering phase	TJPA	<p>SHPO, FTA, SHPO, TJPA, JPB, and CCSF will consult to determine how archaeological properties will be identified, whether and how the NRHP eligibility of such properties may be addressed, and whether and how the Project's effects, if any, on those archaeological properties that may be considered historic properties may be taken into</p>
<p>Consultation will at minimum be informed by, and take into account, the following documents:</p>				
<ul style="list-style-type: none"> Attachment 6, "Standard Treatment of Archaeological Sites: Data Recovery Plan," of the "Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Office, and the California Department of Transportation regarding compliance with Section 106 of the National Historic Preservation Act, as it pertains to the Administration of the Federal Aid Highway Program in California;" 				

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<ul style="list-style-type: none"> • “Archaeological Research Design and Treatment Plan for SF-480 Terminal Separation Rebuild” (Praetzellis and Praetzellis, 1993) and “The San Francisco-Oakland Bay Bridge, West Approach Replacement: Archaeological Research Design and Treatment Plan” (Ziesing, 2000); • “Revised Historical Archaeology Research Design for the Central Freeway Replacement Project” (Thad M. Van Bueren, Mary Praetzellis, Adrian Praetzellis, Frank Lortie, Brian Ramos, Meg Scantlebury and Judy D. Tordoff). 				<p>account. Invite Caltrans to participate in this consultation.</p> <p>The consultation will take into account the designated documents.</p>
<p>CH 16 – If the consulting parties agree that a treatment plan for archaeological properties should be prepared, prepare a Treatment Plan for archeological resources that provides for the identification, evaluation, and treatment of archaeological properties that may be affected by the Project and that conform to the requirements above of item CH13 1) and take into account the information contained in items CH13 2) and CH13 3) and conform to any other standards, documentation, or guidance that the consulting parties may specify.</p>	TJPA	During preliminary engineering	TJPA	TJPA will assure completion of comprehensive treatment plan consistent with the content required in the MOA, if the consulting parties agree that a treatment plan for archaeological properties is to be prepared.
<p>If the consulting parties agree that the Treatment Plan will address historic archaeological properties as well as prehistoric archaeological properties, ensure that appropriately qualified historians prepare a historic context(s) that will be used by an interdisciplinary team consisting at a minimum of historians and historic archaeologist.</p>				TJPA shall transmit this plan to the signatories of the MOA.
<p>The historic context will, at a minimum:</p> <ul style="list-style-type: none"> • identify significant research themes and topics that relate to the historic period(s) addressed by the historic context(s) • determine what types of historic archaeological properties, if any, that may usefully and significantly contribute to research themes and topics deemed by the historic context(s) study to be important • identify the specific components and constituents (features, artifacts, etc., if any, of historic archaeological property types that can factually and directly, contribute data important to our understanding of significant historic research themes and topics • determine the amount (sample size, etc.) of archaeological excavation and related activity that is needed to provide the range and type of factual data 				TJPA will ensure that appropriately qualified historians prepare a historic context(s) that includes the specified information for use by an interdisciplinary team consisting at a minimum of historians and historic archaeologist, if

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
that will contribute to our understanding of significant historic research themes and topics				the consulting parties agree that the Treatment Plan will address historic archaeological properties as well as prehistoric archaeological properties.
<p>Submit the draft Treatment Plan to the other consulting for review and comment. The consulting parties have 45 days from receipt of the draft Treatment Plan to comment in writing to FTA and TJPA. Failure of the consulting parties to respond within this time frame shall not preclude FTA and TJPA from finalizing the draft Treatment Plan to their satisfaction. Before finalizing the draft Treatment Plan, FTA and TJPA to provide the consulting parties with written documentation indicating whether and how the draft Treatment Plan will be modified. Unless any consulting party objects to this documentation in writing to FTA and TJPA within 15 days following receipt, finalize the draft Treatment Plan as deemed appropriate by FTA and TJPA, and proceed to implement the final Treatment Plan.</p>	TJPA	During preliminary engineering phase	TJPA and FTA	<p>TJPA will submit the draft Treatment Plan to the consulting parties for review and comment.</p> <p>Before finalizing the draft Treatment Plan, FTA and TJPA will provide the consulting parties whether and how the draft Treatment Plan will be modified.</p>
<p>If FTA and TJPA propose to modify the final Treatment Plan, they will notify the consulting parties concurrently in writing about the proposed modifications. The consulting parties will have 15 days from receipt of notification to comment in writing to FTA and TJPA. Failure of the consulting parties to respond within this time frame shall not preclude FTA and TJPA from modifying the final Treatment Plan to their satisfaction.</p>				<p>TJPA will ensure that the consulting parties have 15 days following receipt of notification of the modifications to comment in writing about the proposed modifications.</p> <p>Unless consulting party objects, FTA and TJPA will finalize the draft Treatment Plan as they deem appropriate, and TJPA and FTA will implement</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>Before modifying the final Treatment Plan, FTA and TJPA will provide the consulting parties with written documentation indicating whether and how the final Treatment Plan will be modified. Unless any consulting party objects to this documentation in writing to FTA and TJPA within 15 days following receipt, modify the final Treatment Plan as appropriate, and proceed to implement the modified final Treatment Plan.</p>	TJPA	<p>During preliminary engineering phase</p>	TJPA and FTA	<p>the final Treatment Plan. FTA and TJPA will provide the consulting parties whether and how the final Treatment Plan will be modified. TJPA will ensure that the consulting parties have 15 days following receipt of notification of the modifications to comment in writing about the proposed modifications. Unless consulting party objects, FTA and TJPA will modify the final Treatment Plan as they deem appropriate, and TJPA and FTA will proceed to implement the modified final Treatment Plan.</p>
<p>CH 17 – Within two years after FTA, in consultation with TJPA, has determined that all fieldwork required by the Treatment Plan has been completed, prepare a draft technical report that documents the results of implementing the Treatment Plan and distributes this draft technical report to the other MOA signatories for review. The reviewing parties will be afforded 60 days following receipt of the draft technical report to submit any written comments to FTA and TJPA. Failure of the reviewing parties to respond within this time frame shall not preclude FTA from authorizing TJPA to revise the draft technical report as FTA and TJPA deem appropriate.</p>	TJPA	<p>Within two years of completed fieldwork</p>	TJPA and FTA	<p>TJPA will prepare a draft technical report that documents the results of implementing the Treatment Plan and distribute this draft technical report to the other MOA signatories for review.</p>
<p>FTA will provide the reviewing parties with a written documentation indicating modifications in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to FTA and</p>				<p>FTA to authorize TJPA to revise draft as deemed</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>TJPA within 30 days following receipt, modify the draft technical report as FTA and TJPA deem appropriate. Thereafter, issue the technical report in final form and distribute this document in accordance with paragraph CH15 2).</p>				<p>appropriate by FTA and TJPA. FTA will provide the reviewing parties with a written documentation indicating modifications in accordance with any reviewing party comments. Unless any reviewing party objects, FTA and TJA to issue technical report in final form and distribute in accordance with paragraph CH15 2).</p>
<p>Distribute copies of the final technical report documenting the results of the Treatment Plan implementation to the other signatory parties, to any consulting Native American Tribe if prehistoric, protohistoric or ethnographic period archaeological properties were located and addressed under the Treatment Plan, and to the appropriate California Historical Resources Information Survey (CHRIS) Regional Information Center, subject to the terms of Stipulation IV. E (CH19).</p>				<p>TJPA will distribute copies of the final technical report documenting the results of Treatment Plan implementation to other signatory parties, to any consulting Native American Tribe, as applicable, and to the appropriate CHRIS Regional Information Center.</p>
<p>Prepare a written draft document that communicates in lay terms the results of Treatment Plan implementation to members of the interested public. Distribute this written draft document for review and comment concurrently with and in the same manner as that prescribed for the draft written technical report prescribed by paragraph C.1. of this stipulation. If the draft document prescribed hereunder is a publication such as a report or brochure, then distribute such publication to the other signatory parties, to any consulting Native American Tribe as applicable, and to</p>				<p>TJPA will prepare a written draft document that communicates in lay terms the results of Treatment Plan implementation</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
any other entity that the signatory parties and, as applicable, any consulting Native American Tribe, through consultation as appropriate, subject to the terms of Stipulation IV.E (CH 19).				to members of interested public.
Prepare a written annual report describing the status of its efforts to comply with the terms of Stipulations II – IV, inclusive, of this MOA. Prepare the annual report following the end of each fiscal year (July 1 to June 30) that this MOA is in effect and distributed it to all MOA signatories by July 30 of each year until FTA and the SHPO through consultation determine that the requirements of stipulations II – IV, inclusive of this MOA have been satisfactorily completed.	TJPA	During preliminary engineering, final design, and construction	TJPA	TJPA will prepare an annual report describing its efforts to comply with the terms of stipulations II-IV.
CH 18 – If the consulting parties agree that a plan for treatment of archaeological properties will not be prepared, then address any archaeological properties discovered during implementation of any aspect of the Project pursuant to 36 CFR 800.13(b)(3).	TJPA	During construction phase	TJPA	If treatment plan not prepared, TJPA will address any archaeological properties discovered during implementation of any aspect of the Project pursuant to 36 CFR 800.13(b)(3).
CH 19 – The signatories to the MOA acknowledge that historic properties covered by this MOA are subject to the provisions of Section 304 of the National Historic Preservation Act of 1966, as amended, and Section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are consistent with Section 304 of the National Historic Preservation Act of 1966, as amended, and Section 6254.10 of the California Government Code.	TJPA	During preliminary engineering phase	TJPA	TJPA will acknowledge that historic properties covered by the MOA are subject to the provisions specified in the MOA, relating to the disclosure of archaeological site information. TJPA will ensure that actions and documentation are consistent with same.
CH 20 – The parties to the MOA agree that Native American burials and related items discovered during implementation of the terms of the MOA and of the Project will be treated in accordance with the requirements of Section 7050.5(b) of the California Health and Safety Code. If, pursuant to Section 7050.5(c) of the California Health and Safety Code, the county coroner/medical	TJPA	Prior to, during, and following construction	TJPA	TJPA agree that Native American burials and related items discovered during implementation

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<p>examiner determines that the human remains are, or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of Section 5097.98(a)-(d) of the California Public Resources Code. TJPA will ensure that to the extent permitted by applicable law and regulation, the views of any consulting Native American Tribe and the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other Native American archaeological materials and records.</p>				<p>of the terms of the MOA and of the Project will be treated in accordance with the requirements specified. If, pursuant to Section 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are, or may be of Native American origin, then the discovery shall be treated in accordance with the provisions specified. TJPA will ensure that to the extent permitted by applicable law and regulation, the views of any consulting Native American Tribe and the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other Native American archaeological materials and records.</p>
Hazardous Materials/Waste – Operations				
<p>HWO 1 – Construct and operate any Caltrain fueling facility in compliance with local, state and Federal</p>	<p>Caltrain Joint</p>	<p>During constructi</p>	<p>TJPA</p>	<p>Review design and contract documents to ensure</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
regulations regarding handling and storage of hazardous materials. (Caltrain Joint Powers Board (JPB)/TJPA).	Powers Board (JPB)	on and operations		compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Inspect operations, and comply with all permitting and reporting requirements.
HWO 2 – Equip diesel fuel pumps with emergency shut-off valves and, in compliance with U.S. EPA requirements, fuel Underground Storage Tanks (USTs) would be equipped with leak detection and monitoring systems.	JPB	During operations	TJPA	Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Inspect operations, and comply with all permitting and reporting requirements.
HWO 4 – Store cleaning solvents in 55-gallon drums, or other appropriate containers, within a bermed area to provide secondary containment.	JPB	During operations	TJPA	Inspect operations, and comply with all permitting and reporting requirements.
HWO 6 – Follow California OSHA and local standards for fire protection and prevention for the handling and storage of fuels and solvents.	JPB	During operations	TJPA	Review design and contract documents to ensure compliance with all applicable

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>HWO 7 – Prepare a Hazardous Materials Management/Business Plan and file with the CCSF Department of Public Health.</p>	JPB	During final design	TJPA	<p>regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Inspect operations, and comply with all permitting and reporting requirements.</p> <p>JPB to prepare and TJPA to file Hazardous Materials Management/Business Plan with CCSF Department of Public Health (DPH).</p>
<p>Hazardous Materials/Waste – Construction</p>				
<p>HMC 1 – Follow California OSHA and local standards for fire protection and prevention. Handling and storage of fuels and other flammable materials during construction will conform to these requirements, which include appropriate storage of flammable liquids and prohibition of open flames within 50 feet of flammable storage areas.</p>	TJPA	During construction	TJPA	<p>Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations.</p>

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<p>HMC 2 – Perform detailed investigations of the potential presence of contaminants in soil and groundwater prior to construction, using conventional drilling, sampling, and chemical testing methods. Based on the chemical test results, a mitigation plan will be developed to establish guidelines for the disposal of contaminated soil and discharge of contaminated dewatering effluent, and to generate data to address potential human health and safety issues that may arise as a result of contact with contaminated soil or groundwater during construction. The investigation and mitigation plan will follow the requirements of the City and County of San Francisco’s Article 22A in the appropriate areas along the alignment.</p> <p>With construction projects of this nature and magnitude, there are typically two different management strategies that can be employed to address contaminated soil handling and disposal issues. Contaminated soil can be excavated and stockpiled at a centralized location and subsequently sampled and analyzed for disposal profiling purposes in accordance with the requirements of the candidate disposal landfill. Alternatively, soil profiling for disposal purposes can be done in-situ so when soil is excavated it is loaded directly on to trucks and hauled to the appropriate landfill facility for disposal based on the in-situ profiling results. A project of this nature could also combine both strategies.</p>	TJPA	During construction	TJPA	<p>Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW.</p>
<p>HMC 3 – Cover with plastic sheeting soils removed during excavation and grading activities that remain at a centralized location for an extended period of time to prevent the generation of fugitive dust emissions that migrate offsite.</p>	TJPA	During construction	TJPA	<p>Review design and contract documents to ensure compliance. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations.</p>
<p>HMC 4 – Use a licensed waste hauler, applying appropriate manifests or bill of lading procedures, as required to haul soil for disposal at a landfill or recycling facility.</p>	TJPA	During construction	TJPA	<p>Review design and contract documents to ensure compliance. Obtain all applicable permits. Inspect construction to ensure compliance with</p>

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>HMC 5 – Use chemical test results for groundwater samples along the alignment to obtain a Batch Discharge Permit under Article 4.1 of the San Francisco Department of Public Works as well as to evaluate requirements for pretreatment prior to discharge to the sanitary sewer. Effluent produced during the dewatering of excavations will be collected in onsite storage tanks and periodically tested, as required under discharge permit requirements, for potential contamination to confirm the need for any treatment prior to discharge. If required, treatment may include:</p> <ul style="list-style-type: none"> • Settling to allow particulate matter (total suspended solids) to settle out of the effluent in order to reduce the sediment load as well as reduce elevated metal and other contaminant concentrations that may be associated with suspended sediments; and/or • Construction of a small-scale batch waste water treatment system to remove dissolved contaminants (mainly organic constituents such as petroleum hydrocarbons [gas, diesel, and oils], BTEX, and VOCs) from the dewatering effluent prior to discharge to the sanitary sewer. A treatment system would also likely employ the use of filtration to remove suspended solids. 	TJPA	During construction	TJPA	<p>contract documents and regulations.</p> <p>Review design and contract documents to ensure compliance. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW.</p>
<p>HMC 6 – Develop a detailed mitigation plan for the handling of potentially contaminated soil and groundwater prior to starting project construction.</p>	TJPA	During final design	TJPA	<p>Review detailed mitigation plan, include provisions in contract documents and inspect construction to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW. Obtain all applicable permits.</p>
<p>HMC 7 – Design dewatering systems to minimize downward migration of contaminants that can result from lowering the water table if necessary based on environmental conditions. As necessary, shallow soils with</p>	TJPA	During final design and	TJPA	<p>Include requirements in contract documents and</p>

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>detected contamination would be dewatered first using wells screened only in those soils. Dewatering of deeper soils would then be performed using wells screened only in the zone to be dewatered. Dewatering wells would be installed using drilling methods that prohibit shallow contaminated soils from being carried deeper into the boreholes.</p>		<p>construction</p>		<p>monitor construction activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW.</p>
<p>HMC 9 – Review existing asbestos surveys, abatement reports, and supplemental asbestos surveys, as warranted. Perform an asbestos survey for buildings to be demolished, as required. Asbestos-containing building materials (ACM) will require abatement prior to building demolition. Removal and disposal of ACM will be performed in accordance with applicable local, state, and federal regulations.</p>	<p>TJPA</p>	<p>During preliminary engineering, final design and construction phases</p>	<p>TJPA</p>	<p>Determine extent of ACM throughout project site. Perform abatement work prior to demolition. Include all regulatory requirements in contract documents and inspect construction to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH. Obtain all applicable permits.</p>

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>HMC 10 – Perform a lead-based paint survey for buildings to be demolished to determine areas where lead-based paint is present and the possible need for abatement prior to demolition.</p>	TJPA	During preliminary engineering prior to building demolitions	TJPA	<p>Determine extent of lead contamination throughout project site. Perform abatement work prior to demolition if necessary. Include all regulatory requirements in contract documents and inspect construction to insure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH. Obtain all applicable permits.</p>
Pedestrians				
<p>Ped 1 – Use future construction or redevelopment as opportunities to increase building set-backs thereby increasing sidewalk widths. Particular areas where such widening is most needed include:</p> <ul style="list-style-type: none"> • The southeast corner of Fremont and Mission streets, • The northeast corner of First and Mission streets, • The north side of Mission Street between First and Fremont, and • Sidewalks south of Howard Street along Folsom, First, Fremont and Beale that are less than 10 feet wide. 	Agency and CCSF	During future project reviews in Transbay Terminal area	Agency and CCSF	TJPA will forward guidance to Agency, CCSF Planning Department and DPW.
<p>Ped 2 – Eliminate or reduce sidewalk street furniture such as newspaper boxes and magazine racks in the immediate Transbay Terminal area on corners.</p>	Agency and CCSF	Prior to opening of new Transbay Terminal	Agency and CCSF	TJPA will forward guidance to Agency, CCSF Planning Department and DPW.

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Ped 3 – Retime traffic light signalization. This could improve pedestrian levels of service at each of the intersections studies that fall into LOS F.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.
Ped 4 – Provide crosswalk signalization at intersections where they do not exist already, such as Folsom and Beale streets.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.
Ped 5 – Provide cross-walk count-down signals at intersections and cross-walks immediately surrounding the new Transbay Terminal.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.
Ped 6 – Ensure that Transbay Terminal design increases corner and sidewalk widths at the four intersections immediately surrounding the Transbay Terminal.	TJPA and CCSF, DPW	During Transbay Terminal design phase	TJPA	TJPA and CCSF DPW, where applicable, to include sidewalk width expansion during preliminary and final design of new Transbay Terminal.
Ped 7 – Provide lights within crosswalks to warn when pedestrians are present in the crosswalk, such as at the cross-walk associated with the mid-block bus loading area.	TJPA	Prior to opening of new Transbay Terminal	TJPA	TJPA to work with CCSF DPT to install cross-walk warnings.
Pre-Construction Activities				
PC 3 – Complete detailed geotechnical investigation, including additional sampling (drilling and core samples) and analyses of subsurface soil/rock conditions. Use this information to design the excavation and its support system to be used in the retained cut, cut-and-cover, and tunnel portions of the Caltrain Downtown Extension.	TJPA	During preliminary engineering and final design	TJPA	TJPA to obtain necessary permits from CCSF prior to performing drilling. TJPA to perform detailed geotechnical investigation during preliminary engineering. TJPA to review design submittals, contract documents and construction activities to

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
PC 7 – Develop traffic management plans. Traffic management plans to maintain access to all businesses will be prepared for areas affected by surface or cut-and-cover construction. In addition, daily cleaning of work areas would be performed by contractors for the duration of the construction period. Provisions would be contained in construction contracts to require the maintenance of driveway access to businesses to the extent feasible.	TJPA	During preliminary engineering, final design and construction	TJPA	ensure proper utilization of information obtained during investigation. TJPA to forward traffic management plans to CCSF DPT for review and approval. Include all requirements in construction documents and inspect implementation during construction.
General Construction Measures				
GC 4 – Provide for efficient sidewalk design and maintenance. Wherever feasible, maintain sidewalks at the existing width during construction. Where a sidewalk must be temporarily narrowed during construction (e.g., deck installation), restore it to its original width during the majority of construction period. (In some places, this may require placing the temporary sidewalk on the deck.) Each sidewalk design should be of good quality and approved by the Resident Engineer prior to construction. Handicapped access will be maintained during construction where feasible.	TJPA	During preliminary engineering and construction	TJPA	TJPA to work with CCSF DPW on design of sidewalk plans during preliminary and final design and ensure installation during construction.
GC 5 – Provide construction site fencing of good quality, capable of supporting the accidental application of the weight of an adult without collapse or major deformation. Where covered walkways or other solid surface fencing is installed, establish a program to allow for art work (e.g., by local students) on the surface(s).	TJPA	During design and construction	TJPA	TJPA to work with CCSF DPW, incorporate requirements in construction documents and inspect installation during construction.
Air Emissions – Construction (most of the construction measures are retained here even though the City isn't referenced because they are encompassed in the City's Construction Dust Control Ordinance that would apply to the project)				
AC 2 – Water all active construction areas at least twice daily. Ordinance 175-91, passed by the San Francisco Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities; therefore, the project contractor would be required to obtain	TJPA	During construction	TJPA	Include requirements in contract documents and monitor

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
reclaimed water from the City's Clean Water Program or other appropriate sources.				construction activities to ensure compliance.
AC 3 – Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 4 – Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 5 – Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 6 – Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 7 – Install sandbags or other erosion control measures to prevent silt runoff to public roadways.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
AC 8 – Replant vegetation in disturbed areas as quickly as possible.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 9 – Minimize use of on-site diesel construction equipment, particularly unnecessary idling.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 10 – Shut off construction equipment to reduce idling when not in direct use.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 11 – Where feasible, replace diesel equipment with electrically powered machinery.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 12 – Locate diesel engines, motors, or equipment as far away as possible from existing residential areas.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 13 – Properly tune and maintain all diesel power equipment.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>AC 14 – Suspend grading operations during first and second stage smog alerts, and during high winds, i.e., greater than 25 miles per hour.</p>	TJPA	During and following construction	TJPA	<p>activities to ensure compliance.</p> <p>Include requirements in contract documents and monitor construction activities to ensure compliance.</p>
<p>AC 15 – Upon completion of the construction phase, buildings with visible signs of dirt and debris from the construction site shall be power washed and/or painted (given that permission is obtained from the property owner to gain access to and wash the property with no fee charged by the owner).</p>	TJPA	During construction	TJPA	<p>Include requirements in contract documents and monitor construction activities to ensure compliance.</p>
<p>New-MM-C-AQ-5.1 – <i>Prepare and Implement an Emissions Plan.</i> The TJPA shall comply with the following measures to reduce construction emissions: (city not referenced, but they requested that this be included in 2018)</p> <p>A. <i>Construction Emissions Minimization Plan.</i> Prior to issuance of a construction permit, the TJPA shall prepare a Construction Emissions Minimization Plan (Emissions Plan) detailing project compliance with the following requirements:</p> <ol style="list-style-type: none"> 1. All off-road equipment greater than 25 horsepower and operating for more than 20 total hours over the entire duration of construction activities shall meet the following requirements: <ol style="list-style-type: none"> a. Where alternative sources of power are available, portable diesel engines shall be prohibited. b. All off-road equipment shall have the following: <ol style="list-style-type: none"> i. engines that meet or exceed either EPA or CARB Tier 2 off-road emissions standards, and ii. engines that are retrofitted with a CARB Level 3 Verified Diesel Emissions Control Strategy (VDECS). c. Exceptions: <ol style="list-style-type: none"> i. Exceptions to A(1)(a) may be granted if the TJPA has evidence that an alternative source of power is limited or infeasible at the project site, and that the requirements of 	TJPA	Before and during construction	TJPA	<p>Prepare Construction Emissions Minimization Plan. Prior to construction, include provisions in contract documents requiring preparation of emissions plan, reporting requirements, and certification that measures from the emissions plan have been incorporated. Monitor construction activities to ensure compliance and prepare monthly reports and final report within 6 months of</p>

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>this exception provision apply. Under this circumstance, the TJPA shall prepare the documentation indicating compliance with A(1)(b) for on-site power generation.</p> <p>ii. Exceptions to A(1)(b)(ii) may be granted if the TJPA has evidence that a particular piece of off-road equipment with an CARB Level 3 VDECS is (1) technically not feasible, (2) would not produce desired emissions reductions due to expected operating modes, (3) installing the control device would create a safety hazard or impaired visibility for the operator, or (4) there is a compelling emergency need to use off-road equipment that are not retrofitted with a CARB Level 3 VDECS.</p> <p>iii. If an exception is made pursuant to (A)(1)(c)(ii), the TJPA shall provide the next cleanest piece of off-road equipment, as provided by the step-down schedule below).</p> <p>If the requirements of (A)(1)(b) cannot be met, then the TJPA shall meet Compliance Alternative 1. If the TJPA is not able to supply off-road equipment meeting Compliance Alternative 1, then Compliance Alternative 2 shall be met. If the TJPA is not able to supply off-road equipment meeting Compliance Alternative 2, then Compliance Alternative 3 shall be met.</p>				completion of construction.

Off-Road Equipment Compliance Step-Down Schedule			
Compliance Alternative	Engine Standard	Emissions	Emissions Control
1	Tier 2		CARB Level 2 VDECS
2	Tier 2		CARB Level 1 VDECS
3	Tier 2		Alternative Fuel (Not a VDEC)
<p><i>Notes:</i> CARB = California Air Resources Board; VDECS = Verified Diesel Emissions Control Strategy Source: data compiled by AECOM in 2014</p>			

- The TJPA shall require idling times for off-road and on-road equipment to be limited to no more than 2 minutes, except as provided in exceptions to the applicable state regulations regarding idling for off-road and on-road equipment. Legible and visible signs shall be posted in multiple languages (English, Spanish, Chinese) in designated queuing areas and at the construction site to remind operators of the 2-minute idling limit.

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>3. The TJPA shall require that construction operators properly maintain and tune equipment in accordance with manufacturer specifications.</p>				
<p>4. The Emissions Plan shall include estimates of the construction timeline by phase, with a description of each piece of off-road equipment required for every construction phase. Off-road equipment descriptions and information shall include equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, engine serial number, expected fuel usage, and hours of operation. For VDECS-installed equipment, reporting shall indicate technology type, serial number, make, model, manufacturer, CARB verification number level, installation date, and hour meter reading on installation date. For off-road equipment using alternative fuels, reporting shall indicate the type of alternative fuel being used.</p>				
<p>5. The Emissions Plan shall be kept on-site and be available for review by any persons requesting it. A legible sign shall be posted at the perimeter of the construction site indicating to the public the basic requirements of the Emissions Plan and a way to request a copy of the plan. The TJPA shall provide copies of the Emissions Plan to members of the public as requested.</p>				
<p>B. <i>Reporting.</i> Monthly reports shall be prepared to indicate the construction phase and off-road equipment information used during each phase, including the information required in A(4). In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.</p>				
<p>1. Within 6 months of completion of construction activities, the TJPA shall prepare a final report summarizing construction activities. The final report shall indicate the start and end dates and duration of each construction phase. For each phase, the report shall include detailed information required in A(4). In addition, for off-road equipment using alternative fuels, reporting shall include the actual amount of alternative fuel used.</p>				
<p>C. <i>Certification Statement and On-Site Requirements.</i> Prior to the commencement of construction activities, the TJPA shall certify (1) compliance with the Emissions Plan and (2) all that applicable requirements of the Emissions Plan have been incorporated into contract specifications.</p>				

Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Air Emissions – Operations (none)				
Visual/Aesthetics – Construction (none)				
VA 1 – Assure that construction crews working at night direct any artificial lighting onto the work site in order to minimize “spill over” light or glare effects on adjacent areas.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
VA 2 – Assure that contractors make all efforts possible to minimize specific aesthetic and visual effects of construction identified by neighborhood businesses and residents.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
Transportation				
New-MM-TR-1.1 – Modify Signal Operations at the Mission Bay Drive/16th Street Intersection with Seventh Street/Mississippi Street, the Caltrain tracks, and Berry Owens Street. If Caltrain’s service and operations plan requires the use of the MOW/turnback track during the AM/PM peak hours in the future, prior to Caltrain making any such changes, the TJPA, in conjunction with Caltrain, shall conduct further traffic and train operation analysis of the turnback and maintenance of way tracks to evaluate traffic operations along Mission Bay Drive at 16th Street at Seventh/Mississippi Street, the Caltrain MOW/turnback track, and Berry Owens Street. Changes to the PCEP OCS and specialty trackwork, such as control points, switches, and train signals, will be undertaken by the TJPA to allow Caltrain to continue its operations at the level of service defined in the PCEP EIR. In addition, if the traffic/train operation analysis shows that the traffic delays attributable to the gate downtime during the AM/PM peak hours would increase at Mission Bay Drive and Seventh/Mississippi Street or at Berry Owens Street (already operating at LOS E and F) such that the overall intersection would operate at unacceptable LOS E or LOS F, v/c ratio would worsen by more than 10 percent (i.e., a v/c ratio increase of more than 0.10), then improvements shall be implemented to restore	TJPA and Caltrain	Proposal by Caltrain to change its service and operation plan to use the MOW or turnback track during the AM/PM peak hours	TJPA	TJPA and Caltrain to conduct traffic and train operations analysis to identify signal operations and feasible intersection design improvements, which shall be implemented if necessary to achieve the performance standard.

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>operations to the LOS of the intersection at the time of the train/traffic operation analysis so the resulting v/c ratio is no greater than 10 percent above the v/c ratio without use of the turnback track during the AM/PM peak hours. Actions or improvements that could achieve the performance standard, either individually or in combination, include but are not limited to:</p> <ul style="list-style-type: none"> • Signal timing adjustments; • Signal phasing modifications; • Lane reconfiguration/re-striping in conjunction with phasing modification; • Left-turn pocket lengthening; • Pre-empt, pre-signal or queue cutters provision or modification as necessary to manage queues; and/or • Other improvements identified in the future due to technology advancement. <p>The TJPA and Caltrain shall coordinate with the City and shall be responsible for reasonable costs of design, permitting, and construction of the necessary improvements at these crossings to attain the v/c performance standard. These changes to the crossing will also satisfy the performance standard for safe pedestrian and bicycle circulation identified in New-MM-TR-3.1.</p>				

Water Resources and Water Quality

<p>New-MM-WQ-4.1 – <i>Modify DTX Design Criteria to Avoid Flood Hazards.</i> The TJPA shall modify the DTX Design Criteria to protect project elements from flood hazards. Specifically, the TJPA shall design and construct Transbay Program Phase 2 within the area delineated as being within a 100-year floodplain to prevent inundation of the project rail alignment and associated infrastructure and to remain operational for the predicted flood level. Changes to the current DTX Design Criteria will include designing station entrances and other points of access to below-ground portions of the DTX system to maintain sufficient freeboard above the 100-year base flood elevation to protect the rail facilities and the public from 100-year storm water entering the stations and the tunnel. Changes to the design criteria will be completed prior to the next phase of design so that these standards can be incorporated into the 30 percent Preliminary Engineering design for DTX. In updating project designs to meet the modified DTX Design Criteria, the TJPA shall consider the cost-benefit of flood-proofing measures and designs which do not preclude</p>	<p>TJPA</p>	<p>During final design</p>	<p>TJPA</p>	<p>Modify DTX design criteria and ensure measures to avoid flood hazards are incorporated into construction documents.</p>
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Table A-1. Transbay Terminal/Caltrain DTX/Redevelopment Project FEIS/FEIR and SEIS/EIR Mitigation Monitoring and Reporting Program

Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>other measures that may be more practicable and effective when the future flood risks become more evident. Because implementation of the proposed project would occur at a future date, the TJPA shall amend and update the DTX Design Criteria to incorporate new information related to San Francisco’s FEMA FIRM or climate-informed science predictions and mapping of sea-level rise.</p>				
<p>New-MM-CU-WQ-9.1 – Prepare a Sea-Level Rise Adaptation Plan. Based on the vulnerabilities identified from inundation maps of year 2100 sea-level rise, the TJPA will prepare a Sea-Level Rise Adaptation Plan identifying measures that will be taken to protect the new project facilities as well as the existing TJPA facilities from potential damage due to future flooding from sea-level rise. The TJPA will coordinate with other entities with facilities close to the San Francisco Bay with an equal or greater sea-level rise vulnerability, such as the City and County of San Francisco, San Francisco Bay Conservation and Development Commission, the Port of San Francisco, BART, the California Department of Transportation, and the San Francisco Municipal Transportation Agency.</p> <p>Specifically, the TJPA shall design its infrastructure system and buildings so that they remain resilient and adaptable over time. The strategies to implement such protection will evolve from the ongoing sessions with other local jurisdictions and agencies, and the performance standard to be achieved will protect the proposed project from the sea-level rise depths projected by the City for the year 2100. It is recognized that the projected flood depths may be refined over time and that new regional and citywide strategies to address sea-level rise will be identified. To the extent feasible, the TJPA shall amend and update its Adaptation Plan and the performance standard to incorporate this new information.</p> <p>The TJPA shall complete the first Sea-Level Rise Adaptation Plan as part of DTX final design. The Plan shall include the following:</p> <ul style="list-style-type: none"> • Review of available scientific information on sea-level rise data and projections for the subsequent 50 years. Where data and projections indicate different rates of sea-level rise than previously applied, the TJPA will adjust the proposed project’s vulnerability assessment and flood design criteria to reflect a median-point of then-current projections. • Improvements will meet the flood design criteria as feasible and unconstrained by surrounding development not owned by the TJPA. 	<p>TJPA</p>	<p>During final design</p>	<p>TJPA</p>	<p>Prepare Sea-Level Rise Adaptation Plan, and discuss results and potential actions with other agencies that have facilities in the City that may be similarly affected.</p>

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Mitigation Measure	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<ul style="list-style-type: none"> The plan may also rely on flood improvements implemented separately by agencies other than the TJPA, but that will also provide flood risk protection benefits for Transbay Program Phase 2 facilities. Opportunities for partnership with other local and regional parties for sea-level rise adaptation or where regional efforts will address flooding risks to TJPA facilities. 				
<p>Consideration of the cost-benefit of flood-proofing measures and designs that do not preclude other measures that may be more practicable and effective when the future flood risks become more evident.</p>				
<ul style="list-style-type: none"> Where the TJPA's adaptation options are constrained because of adjacent infrastructure (such as adjacent roadways and structures not owned by the TJPA), the TJPA will work with adjacent landowners and infrastructure managers to identify opportunities to improve rail system protection in cooperation with other local or regional parties. 				

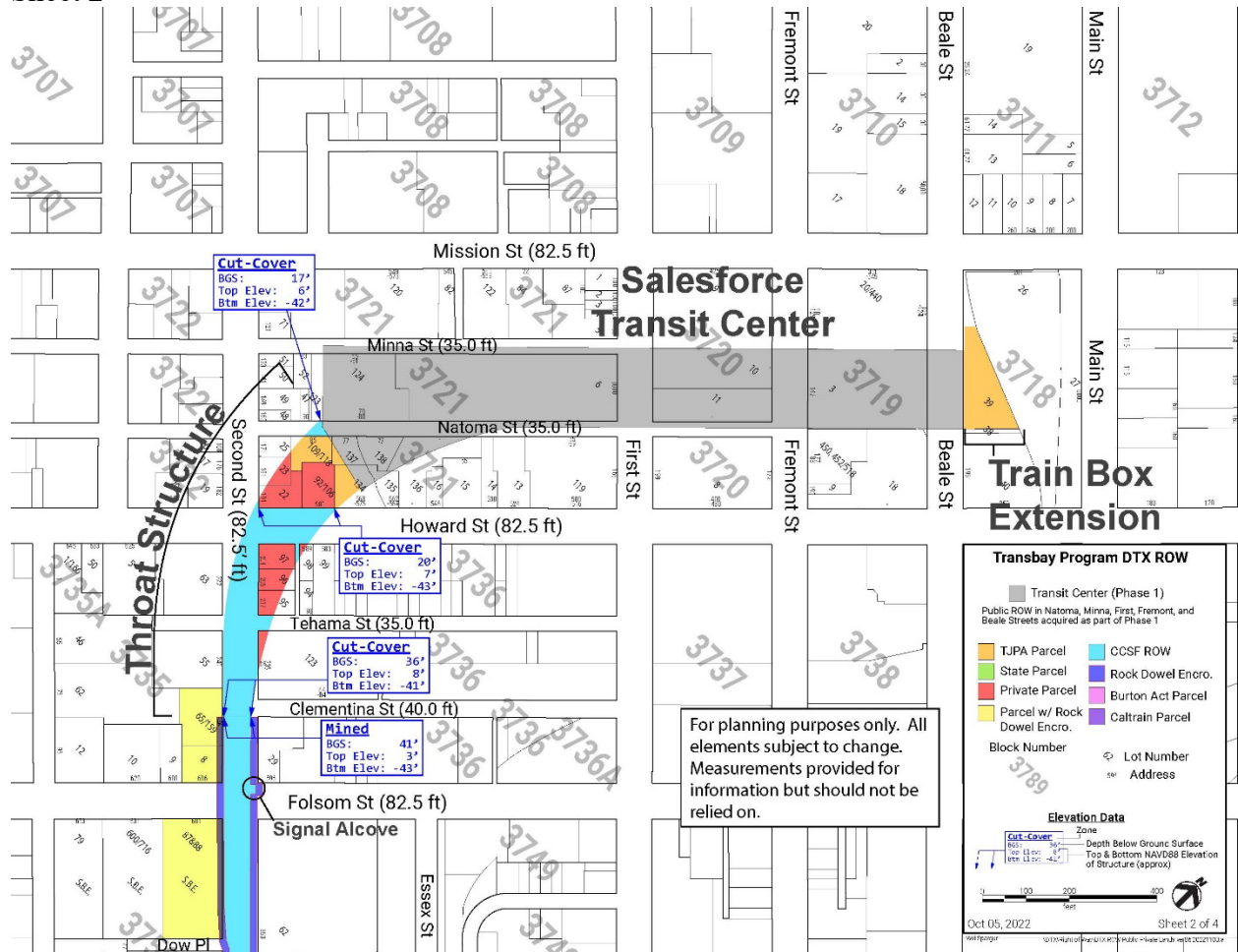
Electromagnetic Fields (none)

Environmental Commitments Included as Part of the Project (Avoidance Measures)

<p>3. Coordinate with SFMTA and enter into a Memorandum of Understanding (MOU), or similar agreement, to avoid impacts to the Muni T-Line (including the Central Subway project) during DTX construction. The MOU would identify construction phasing, sequencing, and timing that work for both agencies and minimize both delays to construction of the DTX, including the underground station at Fourth and Townsend, and disruption to T-Line operations.</p>	TJPA	During final design	TJPA	Identify the phasing, sequencing, and timing for construction that works for both TJPA and SFMTA, and minimizes both delays to construction of the underground station and disruption to T-Line operations.
<p>4. Design the ventilation structures with City input and in accordance with context sensitive design guidelines, which seek to preserve and enhance, to the extent feasible, scenic, aesthetic, historic, community, and environmental resources, while improving or maintaining safety, mobility, and infrastructure.</p>	TJPA	During final design	TJPA	Coordinate with the San Francisco Planning Department to design the appearance of the vent structures to be visually compatible with the surrounding built environment

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<p>5. New-I-TR-1.1 Traffic Improvement and Adaptive Management Plan. A traffic improvement plan and adaptive management plan will<u>shall</u> be developed for the <u>fourth track within the existing two-at-grade rail crossing of Mission Bay Drive and shall address the effects on the intersections along the turn-back track length (at Seventh Street/Mission Bay Drive and Berry Street/Mission Bay Drive from the fourth track 16th Street/Mississippi Street/7th Street)</u>. This plan shall include, which will outline all aspects of avoiding, minimizing, and compensating for all temporary and permanent impacts associated with the project. <u>The traffic improvement plan will</u>shall be reviewed and approved by the City and County of San Francisco prior to implementation.</p> <ul style="list-style-type: none"> Final monitoring requirements for the area will<u>shall</u> be determined through coordination with regulatory agencies (including <u>San Francisco</u>, Caltrain and California High Speed Rail Authority (CHSRA)) and details will<u>shall</u> be included in the improvement plan approved by the City and County of San Francisco. A minimum of two monitoring events of the compensatory mitigation will<u>shall</u> take place after implementation for the first six years after implementation (or until CHSRA serves San Francisco whichever comes first), and one monitoring event for three additional years is required. Additional monitoring after this time period may be necessary based on impacts and any adaptive management applied. After each monitoring event, <u>a report will</u>shall be submitted to the City and County of San Francisco <u>which will</u>shall include, but not be limited to, a narrative of the site conditions, representative analysis including traffic counts, gate down time, and delays, and the performance metrics included in the <u>traffic improvement plan</u>City and County of San Francisco approved mitigation plan. 	TJPA	After construction	TJPA	<p>and, where appropriate, to follow accepted preservation guidelines for context-sensitive infill development in historic districts.</p> <p>The monitoring events and their timing are specified in the improvement measure. A report will be submitted to the city after each monitoring event, per the schedule identified in the improvement measure.</p>



Sheet 3

