COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 31-2024
Adopted October 1, 2024

AUTHORIZING, PURSUANT TO THE TRANSBAY IMPLEMENTATION AGREEMENT, A MEMORANDUM OF UNDERSTANDING WITH THE CITY AND COUNTY OF SAN FRANCISCO, ACTING THROUGH SAN FRANCISCO PUBLIC WORKS, TO FUND AND DELIVER STREETSCAPE AND INFRASTRUCTURE IMPROVEMENTS BENEFITTING THE TRANSBAY BLOCK 2 AFFORDABLE HOUSING PROJECTS IN AN AMOUNT NOT TO EXCEED $11,463,624; PROVIDING NOTICE THAT THIS AUTHORIZATION IS WITHIN THE SCOPE OF THE TRANSBAY REDEVELOPMENT PROJECT APPROVED UNDER THE TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT FINAL ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT, A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED THEREIN FOR PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, In furtherance of the objectives of the Community Redevelopment Law of the State of California ("CRL"), the Redevelopment Agency of the City and County of San Francisco (the "Former Agency") undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted the development project area known as the Transbay Redevelopment Project Area (the "Project Area"); and,

WHEREAS, The Board of Supervisors ("Board of Supervisors") of the City and County of San Francisco ("City") approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006, filed in the Office of the Recorder of the City and County of San Francisco ("Official Records") as Document No. 2006-I224836, as amended by Ordinance No. 84-15 (June 18, 2015)) as Document No. 2015-K135871, and as amended by Ordinance No. 62-16 (April 19, 2016) as Document No. 2016-K333253, and as it may be amended from time to time ("Redevelopment Plan"); and,

WHEREAS, The Redevelopment Plan was adopted with the purpose of redeveloping 10 acres of property owned by the State of California (the "State-owned parcels") to generate funding for the Transbay Joint Powers Authority ("TJPA") to construct the new Transbay Transit Center, now commonly referred to as the Salesforce Transit Center (the "STC"); and,

WHEREAS, In 2003, the TJPA, the City, and the State of California, acting by and through its Department of Transportation ("Caltrans"), entered into a Cooperative Agreement, which sets forth the process for the transfer of the certain state-owned parcels to the City and the TJPA. In 2005, the TJPA and the Former Agency entered into an

agreement which required the Former Agency to prepare and sell the formerly State-Owned Parcels and to implement the Redevelopment Plan, including, among other things, the construction and funding of new infrastructure improvements and the construction of affordable housing ("Implementation Agreement"). After dissolution of all redevelopment agencies in the State, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (commonly known as the Office of Community Investment and Infrastructure ("OCII")) assumed the Former Agency's obligations under the Implementation Agreement. In January 2021 OCII, took ownership of certain parcels within the Project Area including Transbay Blocks 2 and 3. The Redevelopment Plan requires that at least 35% of all new housing in the Project Area is permanently affordable; and,

WHEREAS, In 2006, in furtherance of the Redevelopment Plan and the Design for Development, the Former Agency and the San Francisco Planning Department ("Planning Department"), in collaboration with other City agencies and the TJPA, commissioned production of the 2006 Transbay Streetscape and Open Space Concept Plan ("Streetscape and Open Space Plan"). On November 21, 2006, the Former Agency Commission approved, by Resolution No. 153-06, the Streetscape and Open Space Plan. The Streetscape and Open Space Plan includes design guidelines related to the ten major streets and six public alleyways within the Project Area, as well as neighborhood parks and areas below bus and freeway ramps. The Streetscape and Open Space Plan envisioned a new park on the Block 3 parcel, new Clementina and Tehama Street extensions, pedestrian improvements and other streetscape improvements to enhance and complete the vision for the Transbay Redevelopment Project Area; and,

WHEREAS, On April 15, 2013, the California Department of Finance ("DOF") determined that the Implementation Agreement, along with other Transbay-related documents, is an enforceable obligation that will not require future DOF review, although expenditures under the Implementation Agreement are subject to continuing DOF review. Thus, the Implementation Agreement is an enforceable obligation that requires OCII to among other things, "execute all activities related to the implementation of the Redevelopment Plan, including but not limited to, activities related to major infrastructure improvements." (Section 2.1 (d) of the Implementation Agreement at p. 4); and,

WHEREAS, In 2015, the State enacted legislation authorizing OCII to issue bonds to pay for the "infrastructure required by the Transbay Implementation Agreement." Cal. Health & Safety Code § 34177.7 (a) (1) B). Also, in 2015, the Oversight Board and DOF approved OCII's long range property management plan ("PMP"). The PMP requires, among other things, that upon completion, OCII transfer the new Transbay Block 3 Park and abutting streets to the City and County of San Francisco (the "City") for a governmental purpose; and,

WHEREAS, In accordance with the Streetscape and Open Space Plan and the Implementation Agreement, OCII is responsible for developing affordable housing, streetscape improvements and public open spaces comprised of those State-owned parcels not planned for private development under the Redevelopment Plan. Transbay Blocks 2 and 3, occupying two-thirds of the master block between Howard, Beale, Folsom and Main Streets that was the TJPA Temporary Bus Terminal ("Former Temporary Terminal"), have been conveyed to OCII pursuant to the Cooperative Agreement, the Implementation Agreement, and the Option Agreement. Two mixed-use affordable housing buildings are under construction at Transbay Block 2. The Transbay Block 3 Park and Streetscape Improvements Project includes a future one-acre park to the north of Block 2 as well as the new extensions of Tehama and Clementina Streets and streetscape improvements to the Main and Beale Streets' rights-of-way (collectively, the "Block 3 Project"). Phase 1 of the Block 3 Project (the "Phase 1 Project") is comprised of the new Clementina Street extension and infrastructure improvements including raised crosswalks, signalized crossings, a waterline relocation, a new sewer line and sidewalk widening; and,

WHEREAS, The Phase 1 Project will provide essential pedestrian and vehicular safety and access improvements necessary for the completion and occupancy of the Block 2 affordable housing developments. This includes, but is not limited to, sidewalks, crosswalks, roadway, street lighting, and utility improvements. The project schedules and sequencing of construction between the Phase 1 Project and the Block 2 development has been carefully coordinated to complete the necessary Transbay Block 2 infrastructure improvements concurrent with the City's issuance of Certificates of Occupancy for the two Transbay Block 2 affordable housing projects; and,

WHEREAS, San Francisco Public Works ("SFPW") is the City agency responsible for infrastructure improvements within the public right-of-way. In 2018, OCII executed a Memorandum of Understanding ("2018 MOU") with SFPW to provide professional services for the management, design and engineering of the Block 3 Park (Resolution No. 39-2018). In 2022, OCII executed an amendment to the 2018 MOU ("Amended and Restated MOU") that enabled SFPW and the Recreation and Parks Department ("RPD") to provide additional design and professional services work on the Block 3 Project (Resolution 48-2022); and,

WHEREAS, SFPW has completed the scopes of work as outlined in the Amended and Restated MOU for the Block 3 Project, including construction documentation, permitting, public outreach, and conditional approvals for the project. On July 5, 2024, SFPW issued an Invitation to Bid for construction work required for the Phase 1 Project. Three general contractors submitted bids for the Phase 1 Project and, per City Contracting Policies, SFPW is currently in the process of recommending the low bidder for the Construction Contract; and,

WHEREAS, SFPW will award the Construction Contract contingent upon execution of the Phase 1 Project memorandum of understanding ("Phase 1 Project MOU"), whereby OCII agrees to reimburse SFPW for any costs and liabilities incurred by SFPW for the Phase 1 Project Construction Contract, up to and not exceeding the total Phase 1 Project MOU value; and,

WHEREAS, In 2023, OCII issued $37 million in bonds to fund Transbay infrastructure costs including design and construction of the Block 3 and Under Ramp Park projects. In aggregate, $12 million of these bond funds have been set aside to be used solely for the construction of the Phase 1 Project, shall be restricted for this use as required by SFPW, and shall be used by OCII to reimburse SFPW for all construction-related costs of the Phase 1 Project; and,

WHEREAS, OCII desires to have SFPW perform the scopes of work through this Phase 1 Project MOU, which allocates funding in an amount not to exceed $4,307,562 for construction management services and other Phase 1 project soft costs, and $7,156,062 to fund the project's construction contract for an aggregate total not to exceed $11,463,624; and,

WHEREAS, Expenditures for the Phase 1 Project are included in OCII's approved Recognized Obligation Payment Schedule for the July 1, 2024 to June 30, 2025 period ("ROPS 24-25") as Line Item 431; and,

WHEREAS, The Phase 1 Project MOU was presented to the Transbay Citizens Advisory Committee ("CAC") on August 8, 2024 and the CAC voted in support of the Phase 1 Project MOU; and,

WHEREAS, OCII staff recommends approval of the agreement; and,

WHEREAS, On April 20, 2004, the Commission of the Former Redevelopment Agency of the City and County of San Francisco ("Former Agency Commission") adopted Resolution No. 45-2004, certifying the Final Environmental Impact Statement / Environmental Impact Report (the "FEIS/EIR") for the Transbay Terminal / Caltrain Downtown Extension / Redevelopment Project, which included the Redevelopment Plan. On January 25, 2005, the Former Agency Commission adopted Resolution No. 11-2005, adopting findings under the California Environmental Quality Act ("CEQA"), a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program in connection with the adoption of the Redevelopment Plan. The Board of Supervisors and the City Planning Commission adopted similar findings; and,

WHEREAS, A total of nine addenda to the FEIS/EIR were prepared between June 2, 2006, and June 13, 2022; and,

WHEREAS, The FEIS/EIR is a program environmental impact report ("EIR") under CEQA Guidelines Section 15168 and a redevelopment plan EIR under CEQA Guidelines Section 15180. The FEIS/EIR is also a project EIR under CEQA Guidelines Section 15161 for certain structures and facilities. The FEIS/EIR analyzed the development of public open space uses, including new streets, on and adjacent to Transbay Block 3, in accordance with the Redevelopment Plan and the Design for Development for the Transbay Redevelopment Project. The FEIS/EIR contemplated the Former Redevelopment Agency's disposition of the publicly-owned Transbay Blocks 2, 3, and 4 for the development of private and public uses, including residential and retail uses on Blocks 2 and 4, the extensions of Clementina and Tehama Streets, and a public open space on Block 3; and,

WHEREAS, OCII staff has reviewed the Phase 1 Project MOU and finds that authorizing its approval to enable the development of the Phase 1 Project in accordance with the Project's Schematic Design is an Implementing Action within the scope of the project analyzed in the FEIS/EIR and subsequent addenda and that therefore no additional environmental review is required pursuant to California Public Resources Code Section 21166 and Sections 15162, 15163, 15168, and 15180 of the CEQA Guidelines; and,

WHEREAS, OCII staff, in making the necessary findings for the Implementing Action contemplated herein, considered and reviewed the FEIS/EIR and addenda, has made documents related to the Implementing Action, the FEIS/EIR, and addenda available for review by the Commission and the public, and these files are part of the record before the Commission; and,

WHEREAS, The FEIS/EIR findings and statement of overriding considerations adopted in accordance with CEQA by the Former Agency Commission by Resolution No. 11- 2005 dated January 25, 2005, were and remain adequate, accurate and objective and are incorporated herein by reference as applicable to the Implementing Action; now therefore, be it

RESOLVED, The Commission finds and determines that approving the Phase 1 Project MOU is an Implementing Action within the scope of the project analyzed in the FEIS/EIR and addenda and require no additional environmental review pursuant to California Public Resources Code Section 21166 and State CEQA Guidelines Sections 15180, 15168, 15162 and 15163 for the following reasons:

1. The Implementing Action is within the scope of the project analyzed in the FEIS/EIR and addenda and no major revisions are required due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the FEIS/EIR; and,

2. No substantial changes have occurred with respect to the circumstances under which the project analyzed in the FEIS/EIR and addenda was undertaken that would require major revisions to the FEIS/EIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the FEIS/EIR; and,

3. No new information of substantial importance to the project analyzed in the FEIS/EIR and addenda has become available which would indicate that (a) the Implementing Action will have significant effects not discussed in the FEIS/EIR; (b) significant environmental effects will be substantially more severe; (c) mitigation measures or alternatives found not feasible which would reduce one or more significant effects have become feasible; or (d) mitigation measures or alternatives which are considerably different from those in the FEIS/EIR will substantially reduce one or more significant effects on the environment, and, be it further

RESOLVED, The Commission hereby approves and authorizes the Executive Director to enter into (i) the Transbay Block 3 Phase 1 Construction Memorandum of Understanding (in substantially the form attached to this resolution as Exhibit A) between OCII and the City and County of San Francisco, acting through its Public Works Department and its Recreation and Parks Department, for a not to exceed amount of $4,307,562 for construction management services and other Transbay Block 3 Phase 1 Construction Project soft costs, and a not to exceed $7,156,062 to fund the project's construction contract for an aggregate total not to exceed $11,463,624; and (ii) any and all ancillary documents, including a permit to enter, or take any additional actions necessary to facilitate the activities contemplated under the Transbay Block 3 Phase 1 Construction Memorandum of Understanding and this Resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of October 1, 2024.

Commission Secretary

Exhibit A – Construction Memorandum of Understanding for Professional Services for the Transbay Block 3 Phase 1 Project

MEMORANDUM

To: Office of Community Investment and Infrastructure

Through: Ron Alameida, PUBLIC WORKS Deputy Director, City Architect
Magdalena Ryor, Director of Project Management, PUBLIC WORKS (BDC)

From: Kathleen O'Day
PUBLIC WORKS Building Design and Construction Project Manager

Date: October 1 , 2024

Subject: **Memorandum of Understanding and cost proposal for the Construction PHASE I - Streetscape Infrastructure (Transbay Block 3 Park and Streetscape Improvement Project)**

SAN FRANCISCO PUBLIC WORKS (**"PUBLIC WORKS"**) is pleased to submit this Memorandum of Understanding (**"MOU"** or the **"Agreement"**) and cost proposal for the construction phase services for the construction of a street, sidewalks, streetscape, and water line relocation for the delivery and occupancy of Transbay Block 2 affordable housing project ("Streetscape Infrastructure"). This Streetscape Infrastructure is envisioned to be delivered as the first phase (the "**Phase 1 Project**") of the **Transbay Block 3 Park and Streetscape Improvements Project (the "Block 3 Project"). PUBLIC WORKS will assist** the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure **("OCII"**), with construction, delivery and close out of t**he Phase 1 Project**. PUBLIC WORKS will apply its collective experience to continue to deliver excellent service in our longstanding tradition of designing and managing major projects. PUBLIC WORKS will ensure that the project is managed efficiently and will keep clear communication and full transparency with OCII on risks encountered during construction.

PUBLIC WORKS professional services shall include Project Management, Construction Management, and Construction Administration Services by City Architects and Engineers, and reviews by Disability Access Coordinators, Regulatory Affairs, and Site Assessment Remediation Engineers. PUBLIC WORKS shall coordinate services with the San Francisco Municipal Transportation Authority **("SFMTA")**, San Francisco Public Utilities Committee ("**SFPUC**"), San Francisco City Attorney (**"CAT"**), and the City's Materials Testing Lab. PUBLIC WORKS shall manage consultant services including environmental site monitoring, cost estimating and scheduling, among others.

The following Agreement and associated cost proposals define the scope of services proposed to be performed by PUBLIC WORKS, as well as the roles and responsibilities and mutual understanding between PUBLIC WORKS and OCII for the Phase 1 Project.

Memorandum of Understanding for the Construction Phase of the

PHASE I - Streetscape Infrastructure
(TRANSBAY BLOCK 3 PARK AND STREETSCAPE IMPROVEMENT PROJECT)

SAN FRANCISCO PUBLIC WORKS ("**PUBLIC WORKS**" or "**City**") and the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, commonly known as the OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE ("**OCII**"), (collectively, the "**Parties**") will coordinate and perform the Scope of Work and Scope of Services, as further described in Section I Project Description below, from recommendation for construction contract award, through construction, and close out of the street, sidewalks, streetscape, and water line relocation for the delivery and occupancy of Transbay Block 2 affordable housing project ("Streetscape Infrastructure"). This Streetscape Infrastructure is envisioned to be delivered as part of the first phase of the new Transbay Block 3 Park and Streetscape Improvement Project (the "**Phase 1 Project**") (see **Attachment 1: Phasing Plan**). The Phase 1 Project construction scope includes the new Clementina Street improvements (Final Transfer Map 10327 Lot 4), two signalized crossings at the Beale and Main Street intersections with the new Clementina Street, a waterline relocation along Main Street, and widening of both the Beale and Main Street sidewalks adjacent to Block 3 (Final Transfer Map 10327 Lot 3) (see **Attachment 2: Final Transfer Map**). The Agreement has a term of five (5) years ("**Term**") following its date of execution unless otherwise extended or earlier terminated by either the PUBLIC WORKS Director or OCII Executive Director in accordance with its terms.

A PUBLIC WORKS Project Manager will manage the awarded construction contract, and all soft and hard costs required to construct the Phase 1 Project. The PUBLIC WORKS Project Manager will coordinate with the OCII Project Manager ("**OCII PM**"), who is the client sponsor representative. PUBLIC WORKS will coordinate with the San Francisco Municipal Transportation Agency ("**SFMTA**"), and the San Francisco Public Utilities Commission ("**SFPUC**") to review and approve any proposed streetscape changes to ensure the ROWs are constructed per City standards. PUBLIC WORKS will inform OCII PM of modifications to the Phase 1 Project during construction. Any modifications that exceed $50,000 will require OCII PM review and approval prior to PUBLIC WORKS issuing a change order or add service fee approval. Any significant modifications to the Phase 1 Project's design are also subject to OCII's review and approval to ensure consistency with the Phase 1 Project approvals, the Transbay Redevelopment Plan and its associated documents. OCII's land use authority under the Redevelopment Plan and its related documents is not affected by this Agreement.

OCII will fund all costs of the Phase 1 Project in accordance with this Agreement (including without limitation Paragraph VII below), in the not-to-exceed amount of **Eleven Million, Four Hundred and Sixty-Three Thousand, Six Hundred and Twenty-Four Dollars ($11,463,624)**. Phase 1 Project costs are comprised of hard costs of construction in the amount of **Seven Million, One Hundred and Fifty-Six Thousand, and Sixty-Two Dollars ($7,156,062)** and soft costs (PUBLIC WORKS, its consultants, and City agency staffing, fees and services) in the amount of **Four Million, Three Hundred and Seven Thousand, Five Hundred and Sixty-Two Dollars ($4,307,562) (see Attachment 3: Construction Cost Controls Budget)**. Per the Agreement OCII will retroactively reimburse PUBLIC WORKS for

services performed by PUBLIC WORKS, its consultants, and other City agencies, related to the delivery and closeout of the PHASE I - Streetscape Infrastructure scope of the Project.

PUBLIC WORKS will provide services according to the Phase 1 Project schedule as described in the Agreement, and PUBLIC WORKS will manage the Phase 1 Project from recommendation for construction contract award through construction, Phase 1 Project close out, and City acceptance of the improvements. PUBLIC WORKS Project Manager will support, coordinate, and manage all communications between the respective agencies of the City Team (defined below) and OCII. PUBLIC WORKS will manage communications between the awarded General Contractor and the City project teams including PUBLIC WORKS, SFMTA, SFPUC, and OCII. The Agreement and its attachments herein collectively contain the principal terms and conditions upon which PUBLIC WORKS will provide its services to the Phase 1 Project.

San Francisco PUBLIC WORKS

Recommended By:

_____

Kathleen O'Day Date
PUBLIC WORKS Project Manager

Approved By:

_____

Ron Alameida Date
PUBLIC WORKS Deputy Director

Approved By:

_____

Carla Short Date
PUBLIC WORKS Director

Approved By:

_____

Yadira Taylor Date
City Attorney

Office of Community Investment and Infrastructure

Recommended By:

_____

Benjamin Brandin Date
OCII Transbay Project Manager

Approved By:

_____

Thor Kaslofsky Date
OCII Executive Manager

Approved As To Form By:

_____

James Morales Date
OCII General Counsel

TABLE OF CONTENTS

PROJECT BACKGROUND

I. PROJECT DESCRIPTION

II. PROJECT TEAM

III. SCHEDULE

IV ASSUMPTIONS

V. EXCLUSIONS AND ADDITIONAL SERVICES

VI. PROJECT COST CONTROLS BUDGET

VII. FINANCIAL OVERSIGHT, INVOICE PAYMENTS, AND AUDITS

VIII. INDEMNITY AND INSURANCE

IX. DISPUTE RESOLUTION

X. ENTIRE AGREEMENT

XI. GOVERNING LAW

XII. SEVERABILITY

XIII. RIGHT OF ACCESS/PERMIT TO ENTER

XIV. LIABILITY OF PARTIES

XV. CONFIDENTIAL INFORMATION

XVI. ATTACHMENTS

Project Background

A. This Phase 1 Project furthers a portion of the Redevelopment Plan for the Transbay Redevelopment Project Area (the "**Redevelopment Plan**") and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (the "**Streetscape & Open Space Plan**") approved in 2005 and 2006, respectively. As provided by these plans and the Transbay Redevelopment Project Implementation Agreement ("**Implementation Agreement**") dated January 20, 2005, between the former Redevelopment Agency of the City and County of San Francisco ("**Former Agency**") and the Transbay Joint Powers Authority ("**TJPA**"), OCII (as the successor to the former Redevelopment Agency) is responsible for developing the public open spaces comprised of those State-owned parcels not planned for private development under the Redevelopment Plan. Transbay Block 3, occupying the middle one-third portion of the master block between Howard, Beale, Folsom and Main Streets that previously served as the TJPA Temporary Bus Terminal ("**Former Temporary Terminal**"), was conveyed by the TJPA to OCII pursuant to 1) the Transbay Transit Terminal Cooperative Agreement ("**Cooperative Agreement**") dated July 11, 2003 between the State of California Department of Transportation, the City and County of San Francisco ("**City**"), and the TJPA, 2) the Implementation Agreement, and 3) the Transbay Redevelopment Project Option Agreement between the City, OCII, and TJPA originally adopted January 31, 2008 and amended in January 22, 2015 for the purchase and sale of real property. Transbay Block 3 is planned to become a future park and streetscape improvements project.

B. The Streetscape & Open Space Plan was further refined in the Transit Center District Plan (2012). For the Phase 1 Project, the Streetscape & Open Space Plan contemplates the new Clementina Street extension, two full intersection signalized crossings, relocation of a water main line on Main Street, new Beale and Main Street sidewalk widenings and other streetscape improvements (the "**Phase 1 Project Scope**") needed for the delivery and occupancy of Transbay Block 2 affordable housing project. This Streetscape Infrastructure will enhance and complete the vision for the Transbay Redevelopment Project Area (the **"Project Area"**). Additionally, the Streetscape & Open Space Plan contemplates a new public open space on Block 3 which OCII plans for a future separate construction project of a new park with a playground, restroom and storage facilities (the **"Block 3 Phase 2 Park Scope"**), and the new Tehama Street extension (the **"Block 3 Phase 3 Tehama Scope"**) (see **Attachment 1: Phasing Plan**).

C. For the purposes of this Agreement, the Phase 1 Project consists of the Phase 1 Project Scope, as further detailed in Section I Project Description below.

D. In 2018, OCII and PUBLIC WORKS entered into the original Block 3 MOU (OCII Resolution 39-2018, adopted September 18, 2018, "**Original MOU"**) between the Parties whereby OCII hired PUBLIC WORKS to provide project management and professional services related to the design and engineering for the Phase 1 Project, and in 2022, the Parties amended and restated the Original MOU to incorporate an expanded role for the San Francisco Recreation and Parks Department ("**RPD**") as the future owner and manager of the Block 3 park and augment PUBLIC WORKS and other City agencies' scopes of work on the Phase 1 Project.

E. The Concept Design and Schematic Design for the Block 3 Project were informed by an extensive community engagement process. OCII staff presented the Schematic Design to the Transbay Citizens Advisory Committee ("**CAC**") on February 10, 2022, and the CAC voted unanimously in support of the Block 3 Project. On March 17, 2022, the RPD Commission by Resolution No. 2203-007 recommended the Block 3 Project's Schematic Design for approval.

F. On December 6, 2022, the OCII Commission by Resolution No. 48-2022 conditionally approved the Block 3 Project's Schematic Design, adopted environmental findings pursuant to the California Environmental Quality Act, and provided notice that the Block 3 Project's Schematic Design approval is within the scope of the Transbay Terminal / Caltrain Downtown Extension / Redevelopment Project Final Environmental Impact Statement / Environmental Impact Report ("**FEIS/EIR**").

G. Also on December 6, 2022, the OCII Commission approved by Resolution No. 48-2022 an amended and restated Memorandum of Understanding ("**Amended MOU**") between the City, acting through its PUBLIC WORKS and Recreation and Parks Departments, and OCII to complete the design and engineering of the Block 3 Project and to increase the expenditure authority for these services by $3,765,045, for an aggregate amount not to exceed $7,660,658; and provided notice that the Amended MOU is within the scope of the FEIS/EIR.

H. On February 1, 2012, the State of California dissolved all redevelopment agencies including the Former Agency, by operation of law pursuant to California Health and Safety Code Section 34170 et seq. ("**Redevelopment Dissolution Law**"). Under the authority of Redevelopment Dissolution Law and San Francisco Ordinance No. 215-12 (October 4, 2012) (establishing the Successor Agency Commission ("**OCII Commission**") and delegating to it state authority under Redevelopment Dissolution Law), OCII is administering the enforceable obligations of the Former Agency. On April 15, 2013, the California Department of Finance ("DOF") determined "finally and conclusively" that the Implementation Agreement, along with other Transbay-related documents, is an enforceable obligation that requires OCII to among other things, "execute all activities related to the implementation of the Redevelopment Plan, including but not limited to, activities related to major infrastructure improvements."

I. The Redevelopment Dissolution Law requires OCII to dispose of its real estate assets under a Long-Range Property Management Plan (**"PMP"**), which the California Department of Finance and the Oversight Board of the City and County of San Francisco approved, by Resolution No. 14-2015 (Nov. 23, 2015). The Phase 1 Project site (the "**Phase 1 Site**") is comprised of Block 3 (Final Transfer Map 10327 Lot 3), the adjacent future Clementina Street extension (Final Transfer Map 10327 Lot 4) and the Beale and Main Street sidewalks abutting Block 3. Except for the sidewalks on Beale and Main Streets, OCII currently owns the Phase 1 Site. OCII will dedicate the new Clementina Street parcel as a legal right-of-way ("**ROW**") to the City for acceptance following construction review and approval by PUBLIC WORKS. Thus, PUBLIC WORKS will be the future owner of the new Clementina Street ROW. The City's Infrastructure Task Force will be responsible for all work related to ensuring City agency reviews and approvals for street acceptance of Clementina Street post construction, including but not limited to presentations to the San Francisco Board of Supervisors and final recording of granting the deed transfer from OCII to PUBLIC WORKS.

J. The Redevelopment Dissolution Law also requires OCII to complete the affordable housing enforceable obligations of the Redevelopment Plan, which include the development of two affordable housing projects on Transbay Block 2, both currently under construction.

K. Construction of the Phase 1 Project will require coordination with various adjacent construction projects, including but not limited to coordination with PUBLIC WORKS and MTA projects on both Beale and Main Streets, and OCII's Block 2 affordable housing developments.

L. OCII has an enforceable obligation to fund the construction costs of the Phase 1 Project and will use bond proceeds and or other funding sources to reimburse PUBLIC WORKS.

M. Prior to award of the Phase 1 Project construction contract by PUBLIC WORKS, the OCII Commission will need to review and approve the total not-to-exceed construction budget amount which is estimated from the 100% Construction Documents and hard costs not covered in the contract bid amount. Also, the PUBLIC WORKS Commission will need to review and approve the award of contract to the selected General Contractor. PUBLIC WORKS may only approve and execute this Agreement if the San Francisco Board of Supervisors first approves an ordinance delegating the City's authority for it to enter Transbay-related Agreements with OCII to PUBLIC WORKS.

N. In the fall of 2021, SFPUC Street and Pedestrian Lighting confirmed that the Phase 1 Project is approved to use PG&E retail power for all ROW lighting and to tie into the existing power supply for street lighting along Beale and Main Streets as well as the new Clementina Street;

O. The SFPUC on October 6, 2020 and in June 17, 2024 approved a waiver of the minimum water main clearance requirement for the Block 3 Project's new curbs on Beale Street. On April 30, 2024, PUC confirmed the existing 20-inch transmission water main line can be located under the new widened Main Street sidewalk for up to 6 months prior to the Phase 1 Project scheduling with San Francisco Water Department ("**SFWD**") to connect the new relocated main water line to the existing 20-inch main. In addition, on October 5, 2022, the SFPUC, PUBLIC WORKS and SFMTA entered into a Memorandum of Understanding concerning any future potential repairs to the crosswalk island on Beale Street located over an existing SFPUC 16-inch water main (Interdepartmental Agreement between MTA, PUC, and PUBLIC WORKS regarding Beale Street Improvement Project ((San Francisco PUBLIC WORKS Contract ID No. 10034888));

P. On November 9, 2023, PG&E approved plans specifying that new sidewalk light and signal pole foundations on Main Street sidewalks can be 12 inches from PG&E gas lines, and trees are allowed to be within less than 5 feet from gas lines as long as the trees have a tree root barrier;

Q. In November 2023, AT&T approved plans for new infrastructure on Beale and Main Street sidewalks specifying that the infrastructure can be 12 inches from AT&T duct banks (on both Beale and Main Streets) and vault (on Main Street):

R. In January 2024, SFPUC approved the Phase 1 Project's photometrics and light locations;

S. In January 2024, both the SFPUC and SFMTA approved locating the Phase 1 Project's signal pole foundations greater than 24 inches from the face of curb to avoid existing AT&T and PG&E utility relocations;

T. On September 18, 2023, the Federal Transportation Authority ("FTA") confirmed that the Phase 1 Project is not part of the federal transportation project, and would not be subject to the National Environmental Policy Act;

U. OCII has confirmed the Block 2 contractor will vacate the full Clementina Street parcel on January 17, 2025, including the southern sidewalk. OCII is therefore allowing Phase 1 Project access to the Phase 1 Site to begin construction of the new Clementina Street right-of-way starting on January 17, 2025;

I. PROJECT DESCRIPTION

The Phase 1 Project will construct streets, sidewalks, streetscape, and water line relocation for the delivery and occupancy of the Transbay Block 2 affordable housing project. The Phase 1 Project is the first phase of the larger Block 3 Project that includes two future phases: the Block 3 Phase 2 Park Scope and the Block 3 Phase 3 Tehama Scope (see **Attachment 1: Phasing Plan**). The Phase 1 Project Scope consists of (1) the streetscape improvements along the Beale and Main Street sidewalks abutting the future Block 3 park including sidewalk widening with new curb alignment and standard sidewalk paving and street lighting; (2) buildout of the new Clementina Street extension adjacent to the south side of the future Block 3 park including new lighting, street trees and a new sewer line; (3) signalized crossings at the intersections of Clementina Street with Beale and Main Streets and (4) the relocation of the 20-inch transmission water mainline on Main Street running parallel to both Block 3 and the northern portion of Block 2.

Per PUBLIC WORKS bid requirements, the General Contractor will be required to complete the new Clementina Street and sewer lateral installation in coordination with the Block 2 developers' contractor.

1. SCOPE OF WORK

PUBLIC WORKS will provide project management services for the successful delivery of the Phase 1 Project from construction through close out. PUBLIC WORKS will award and manage the Phase 1 Project construction contract in addition to coordinating the construction performed outside of the construction contract by the SFPUC, SFMTA, and other utility coordination PUBLIC WORKS scope of services includes project management, construction management, contract administration services, landscape architectural and engineering construction administration services, site assessment remediation, regulatory affairs and coordinating services with other City departments including SFMTA and SFPUC. PUBLIC WORKS will also manage all the professional consulting services through the City's pre-approved list of consultants necessary for the construction of the Phase I Project. The services described above and others identified in this MOU as services arising under the MOU are the "**MOU Activities.**"

PUBLIC WORKS Project Manager ("**PUBLIC WORKS PM**"), Construction Manager ("**CM**") and Project Lead will attend the pre-construction meeting, and the weekly construction administration coordination and site meetings, as necessary, based on an 18.6-month construction schedule plus an additional 3-to-6-month construction closeout period. PUBLIC WORKS engineers, architects and consultants will attend construction administration coordination meetings and site visits as required pending work in progress. PUBLIC WORKS Construction Management team will review contractor submittals, including material certifications, shop drawings, and testing and inspection reports and distribute to the PM, design and engineering team, as appropriate, for review and approval. PUBLIC WORKS Construction Management team will review and distribute the General Contractor's Request for Information ("**RFI**") and change order requests to the PM, design lead and appropriate design or engineering team members for review and response. PUBLIC WORKS CM will conduct site visits to observe construction in progress and prepare Daily Engineer's Field Reports ("**EFR**") including photos for distribution to the PM and design team Leads as well as OCII, if requested. PUBLIC WORKS CM will prepare punch list with design and engineering team assistance at substantial completion and back check upon completion.

OCII staff ("**OCII PM**") will attend construction administration meetings and site visits along with PUBLIC WORKS PM to help expedite decisions at meetings and in the field.

2. PROJECT COORDINATION

The City Design Team, as defined in Section 4A. PROJECT ROLES AND RESPONSIBILITIES below, will attend coordination meetings as needed during construction with City agencies with jurisdiction over the Phase 1 Project, including but not limited to the Infrastructure Task Force ("**ITF**"), San Francisco Fire Department ("**SFFD**"), SFMTA, SFPUC Water, Power and Sewer, and PUBLIC WORKS Disability Access Coordinators, other City staff managing the development of City-sponsored street improvement projects that impact this Phase 1 Project's construction (e.g., the Active Beale Street, Main Street Bike Facility, SFPUC sewer replacement, and PUBLIC WORKS repaving of Beale and Main Street projects, among others), and OCII.

At construction substantial completion, PUBLIC WORKS CM will review the General Contractor's as-built drawings. The PM will assist the ITF by providing any required documentation from the General Contractor that the Task Force requires for the future anticipated PUBLIC WORKS acceptance of the new ROW.

3. PROFESSIONAL SERVICES

A. Project Management.
PUBLIC WORKS will deliver the Phase 1 Project construction contract. PUBLIC WORKS PM will manage PUBLIC WORKS construction management services, design and engineering construction administration services, and project-related work during construction conducted by the various City professionals within PUBLIC WORKS, SFPUC and SFMTA. The PUBLIC WORKS PM will continue to work closely with OCII throughout construction.

B. Construction Management.
The professional services managed by PUBLIC WORKS PM during construction includes the construction management services to be performed by PUBLIC WORKS Bureau of Infrastructure and Design ("**IDC**") Construction Management team. The Phase 1 Project construction management coordination will be the responsibility of the IDC CM.

The IDC CM team will fulfill the intent of the Phase 1 Project scope and purpose, according to the contract plans and specifications, working within the guidelines of the San Francisco standard plans and specifications with minimal disturbance to the public and the residents of the area.

The IDC CM team will facilitate project coordination between the City agencies and General Contractor for contract work (excluding Water Department scope of work) and coordinate progress meetings, conduct preliminarily review of engineering submittals and RFIs and circulate them to appropriate City agencies for review comment and final approval. Additional IDC CM scope includes review and processing of progress payments and change orders. The IDC CM team will coordinate with City agencies to provide assessment and prompt resolution of construction issues that may lead to potential cost and schedule impact. They will establish adequate filing and document control systems to ensure proper documentation of construction diaries, quality assurance and quality control reports, punch list, and close-out documents for official records. The IDC CM team will coordinate and compile the Phase 1 Project punch list upon completion of contract scope of work specified by the contract documents. CM will schedule punch list walkthroughs with project designers, City agencies, and contractors. The IDC CM team shall secure proper sign-off on completed punch list items before closing out Phase 1 Project. Finally, The IDC CM team will conduct thorough review of redlined as-builts

for accuracy and completeness prior to generating record drawings by the General Contractor and will secure proper documentation to support the determination of completeness for close-out and subsequent acceptance by the City.

With the assistance from PUBLIC WORKS Site Assessment Remediation and Regulatory Affairs staff and soil engineering consultant Baseline Engineers, IDC CM team will both track and oversee the construction activities to ensure compliance with the Project Area's environmental requirements.

C. Construction Administration and Access Compliance Reviews.
The Professional Service managed by the PUBLIC WORKS PM during construction includes site visits, meetings and reviews by PUBLIC WORKS IDC Disability Access Coordinator, Site Assessment Remediation Engineers ("**SAR**") and the City landscape architects and engineers who additionally perform construction administration services:

1) SFMTA Engineers
2) SFPUC Hydraulic Engineers
3) PUBLIC WORKS
    a. Landscape Architecture,
    b. Civil Engineering,
    c. Structural Engineering,
    d. Geotechnical Engineering,
    e. Hydraulic Engineering,
    f. Electrical Engineering,

D. Mitigation Measure Requirement Plan ("**MMRP**").
The Professional Service managed by PUBLIC WORKS during construction includes oversight to ensure PUBLIC WORKS IDC CM has support and assistance from SAR, PUBLIC WORKS Regulatory Affairs Staff and PUBLIC WORKS consultant Baseline Engineering in tracking and monitoring construction activities for Project Area environmental compliance. (See **Attachment 6: Environmental Commitment Record**).

E. Consultant Services.
The Professional Services managed by PUBLIC WORKS PM during construction includes PUBLIC WORKS as needed consultant services including a cost estimator, scheduler, and soil engineer.

F. Public Affairs.
PUBLIC WORKS Public Affairs ("**Public Affairs**") will communicate with the public, constituents, residents and businesses in the Project Area. Public Affairs will provide general project updates to the public. Additionally, Public Affairs will relay concerns from the community to the Phase 1 Project team to facilitate resolution of public concerns. Public Affairs staff will attend weekly progress meetings and maintain open communication with the Phase 1 Project team, including the OCII PM.

G. Contract Monitoring Division/Small Business Enterprise Program.
PUBLIC WORKS PM will coordinate with the CMD and OCII Contract Compliance Department ("**OCII CCD**") to ensure that applicable City contracting policies fulfill the goals of OCII's SBE policy (see **Attachment 7: OCII Small Business Enterprise Policy**).

For all City contractors brought onto the Phase 1 Project during its construction phase, PUBLIC WORKS PM and CMD will work towards assisting OCII in meeting its 50% goal for SBE participation by:

1. Approving SBE contract service orders or work orders, and
2. Providing OCII CCD with quarterly SBE participation status reports. PUBLIC WORKS will give first consideration in the approval of contract service orders or work order in the following order:

    a) Redevelopment Project Area SBEs (those located in an OCII Redevelopment Project Area), San Francisco-based SBEs (LBEs) located in zip code areas 94124, 94134 and 94107 are given first consideration,
    b) San Francisco-based SBEs, and
    c) all other SBEs.
    d) PUBLIC WORKS PM will continue to coordinate with CMD and OCII CCD to ensure adherence to SBE program requirements.

PUBLIC WORKS PM will also coordinate with CMD, OCII CCD and its agent, the Office of Economic and Workforce Development ("**OEWD**" or "**City Build**"), to ensure the General Contractor follows the hiring and reporting goals of OCII's Construction Workforce Program, which requires that contractors (regardless of tier) make good faith efforts to employ San Francisco residents for 50% of the hours by each trade needed to construct the Phase 1 Project. Additionally, per OCII request, PUBLIC WORKS will include a requirement in the bid documents for the General Contractor to ensure that San Francisco-based SBEs (LBEs) located in zip code areas 94124, 94134 and 94107 are given first consideration, followed by SBEs/LBEs located throughout the remainder of the City. SBEs outside of the City should only be utilized if local SF-based SBEs/LBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs. (See **Attachment 8: Bid Outreach Strategies**).

4. PROJECT ROLES AND RESPONSIBILITIES

A. Funding.

OCII's primary role as the Phase 1 Project sponsor is to fund its construction. OCII's role also includes pre-construction and construction phase coordination with the developers of the adjacent Transbay Block 2 residential development ("Transbay 2 Residential Development") and the East Cut Community Benefit District ("ECLP" staff or permittee for the interim uses currently authorized on portions of Transbay Blocks 3 and 4 ("**Adjacent Users**"). To ensure consistency with Redevelopment Plan, its related documents, and OCII's adjacent Transbay developments, any significant design aesthetic or major layout modifications to the Phase 1 Project are subject to OCII's review and approval.

B. Hiring and Contracting

In addition, OCII will:

(i) apply City Build's Local Hiring Requirement Specification 007330 to state "For all construction contracts for Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, *with an aspirational goal of achieving 50%*. This document also establishes a goal of no less than 15% of Project Work

Hours within each trade to be performed by Disadvantaged Workers." San Francisco Office of Labor Standards Enforcement ("**OLSE"**) shall include their standard Form 1 Local hiring Plan, Form 3 Job notice Form and Form 4 Conditional Waiver.

(ii) apply the City's General Prevailing Wage Provisions requirements as written in Public Works standard Specifications Sections 00 45 60, 00 52 00, and 00 72 00 versus OCII's Prevailing Wage Provisions (dated October 2021).

(iii) require that San Francisco Contract Monitoring Division ("**CMD**") include into the **SBE** Forms for this Phase 1 Project certain requirements as defined in **Attachment 7: OCII SBE Policy** and outlined in 3. PROFESSIONAL SERVICES, G. Contract Monitoring Division/Small Business Enterprise Program (See Attachment 7).

C. City Design Team

The following three City agencies have distinct jurisdiction and/or responsibilities over the Phase 1 Project. PUBLIC WORKS PM will coordinate with representatives of each agency so that they function collectively as the "**City Design Team**" in coordination with OCII:

1) San Francisco PUBLIC WORKS
2) San Francisco Municipal Transportation Agency
3) San Francisco Public Utilities Commission

D. Project Coordination between PUBLIC WORKS and Partner City Agencies

PUBLIC WORKS PM will work in conjunction with the OCII PM, as the project sponsor representative, and the PUBLIC WORKS PM will ensure coordination, at OCII's direction, with the Adjacent Users. The coordination with Adjacent Users as understood per the current Block 3 Phase 1 Infrastructure Scope schedule duration estimate (see **Attachment 9: Schedule Duration Estimate**) and construction scope, which are also included in the project's construction bid documents, is included in the MOU budget's estimated construction bid amount (see **Attachment 3: Construction Cost Controls Budget**). Additionally, the total MOU budget includes a 5% contingency to address schedule delays or scope changes impacted by coordination of this Phase 1 Project with Adjacent Users.

The PUBLIC WORKS PM will have overall responsibility to coordinate construction administration by the City Design Team, site assessment remediation and construction managers during construction of the Phase 1 Project; provided, however, that the PUBLIC WORKS PM will also coordinate these activities with the Adjacent Users. The PUBLIC WORKS PM will coordinate and manage as-needed consultants and other City agencies as required during construction of the Phase 1 Project.

PUBLIC WORKS PM and Analyst will set up funding for City Agency reviews and transfer fees to City Agencies including Department of Public Health for Maher-related work; SFPUC for lighting, water and sewer related work; and fees and SFPUC for Stormwater Control Plan final reviews.

E. PUBLIC WORKS Project Funding Set-Up and Billing

PUBLIC WORKS PM and Analyst will set up funding for the City Design Team, Construction Management team, additional PUBLIC WORKS staff and outside consultants hired through PUBLIC WORKS as-needed consultant pool. Additionally, PUBLIC WORKS will set up funding for SFPUC and SFMTA staff in order for them to bill their time for work on the Phase 1 Project. SFPUC, and SFMTA will submit cost invoices to PUBLIC WORKS for inclusion in its Phase 1 Project construction invoices for reimbursement by OCII. PUBLIC WORKS will also manage the invoices of any consultants working

on the Phase 1 Project. PUBLIC WORKS will submit Phase 1 Project invoices to OCII on a quarterly basis. OCII will be responsible for reimbursing PUBLIC WORKS of all applicable City fees due.

F. PUBLIC WORKS Staffing

PUBLIC WORKS Landscape Architects and Engineers, CM, SAR engineers, access coordinators and consultants will provide professional services required during construction of the Phase 1 Project's construction. PUBLIC WORKS PM will coordinate work, generate and distribute meeting minutes for City team coordination.

G. PUBLIC WORKS Role with SFMTA and SFPUC

PUBLIC WORKS PM will ensure SFMTA and SFPUC team members are informed of Phase 1 Project construction activities requiring their review and PUBLIC WORKS PM will consult with OCII PM on any proposed changes from SFMTA and/or SFPUC.

H. OCII and PUBLIC WORKS Roles in Permits:

PUBLIC WORKS PM, with assistance from the PUBLIC WORKS team, will submit and obtain all necessary permits for Phase 1 Project construction except for those required of the General Contractor. OCII will reimburse PUBLIC WORKS for all fees necessary to obtain the permits and perform the Phase 1 Project construction work.

4. TOTAL CONSTRUCTION BUDGET

The Phase 1 Project total construction budget amounts to a not-to-exceed sum of **Eleven Million, Four Hundred and Sixty-Three Thousand, Six Hundred and Twenty-Four Dollars ($11,463,624) (see Attachment 3: Construction Cost Controls Budget)**. The Phase 1 Project construction hard cost budget is **Seven Million, One Hundred and Fifty-Six Thousand, and Sixty-Two Dollars ($7,156,062)** and soft cost budget is **Four Million, Three Hundred and Seven Thousand, Five Hundred and Sixty-Two Dollars ($4,307,562) (See below table).**

PHASE 1 PROJECT CONSTRUCTION BUDGET: Summary of Soft vs Hard Construction Costs		
Soft Costs Subtotal	$	3,745,705
Project Control Reserve (15% Soft Cost Contingency)	$	561,856
Subtotal Soft Costs	**$**	**4,307,562**
Advertised Engineer's Estimate (estimated construction bid)	$	4,909,360
Additional Hard Costs and Allowances (not included in construction bid)	$	886,402
Construction Work Reserve Hard Cost Contingencies • 5% Bid Contingency • 5% Coordination with Adjacent User Contingency • 15% Construction Contingency	$	1,360,300
Subtotal Hard Costs	**$**	**7,156,062**
Total Construction Budget	**$**	**11,463,624**

The Advertised Engineer's Estimate for the construction bid amounts to **Four Million, Nine Hundred and Nine Thousand, Three Hundred and Sixty Dollars ($4,909,360)** (see **Attachment 4a: Public Works Engineers 100% CDs Estimate and the Final Reconciled Averaged Bid Estimate** (Advertised Engineer's Estimate) and **Attachment 4b: MLEE 100% CD Estimate**. Additional hard costs include allowances listed under "Construction Work" in Attachment 3. Hard cost construction contingencies (listed under "Construction Work Reserve" in Attachment 3 include 5% Bid, 5% Coordination with Adjacent User and 15% Construction Contingencies. The Phase 1 Project total hard costs totaling **Seven Million, One Hundred and Fifty-Six Thousand, and Sixty-Two Dollars ($7,156,062)** include the Advertised Engineer's Estimate, additional construction hard costs and contingency (See Phase 1 Project Construction Budget Table above and **Attachment 3: Construction Cost Control Budget**).

II. PROJECT TEAM

The Phase 1 Project Team is as follows:

1) SAN FRANCISCO PUBLIC WORKS

A. Building Design & Construction (BDC) Staff:
   1. Project Manager
   2. Project Management Analyst
   3. Landscape Architects

B. Infrastructure Design & Construction (IDC) Staff:
   1. Streets & Highways Engineers (Civil Engineer)-Project Lead
   2. Hydraulic Engineers
   3. Mechanical Engineers
   4. Electrical Engineers
   5. Structural Engineers
   6. Geotechnical Engineers
   7. Disability Access Coordinator ("DAC")
   8. Regulatory Affairs Specialist
   9. Site Assessment & Remediation Environmental Engineer (SAR)
   10. Construction Management, Resident Engineers and Inspectors

C. Contract Monitoring Division (CMD) and Contract Administration Staff:
   a. Principal Accountant
   b. Contract Administration
   c. Contract Preparation & Project Controls

D. Public Affairs
   1. Director of Policy and Communications
   2. Manager of Public Affairs and Communications for Construction

E. Bureau of Street Use and Mapping Site Surveyor (allowance for services)

F. Other City Departments

1. City Attorney
2. Material Testing Lab
3. Department of Public Health Maher Program

G. PUBLIC WORKS Consultants:
1. Archeologist (allowance for services)
2. Arborist (allowance for services)
3. Cost Estimator
4. Scheduler
5. Soil Engineer

2) SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)

A. Sustainable Streets Engineers
B. Traffic Routing
C. Signals Traffic Engineers
D. Signal Shop
E. Paint Shop

3) SAN FRANCISCO PUBLIC UTILITIES COMMISSION (SFPUC)

A. City Distribution Division ("**CDD**") Engineers and inspectors (Water)
B. Street Lighting Engineers (Street lights)
C. Hydraulic Engineering (Sewer)

4) OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE:

A. Transbay Project Manager
B. Transbay Development Specialist
C. OCII Design Review Staff

III. SCHEDULE:

PHASE	DURATION	START	END
CONSTRUCTION	18.6 Months	Jan 2025	July 2026
CLOSE OUT PHASE	3-6 Months	Aug 2026	Jan 2027
WARRANTY PHASE	1-YR		
TREE MAINTENANCE PERIOD	3-YR		

See **Attachment 9** – **Schedule Duration Estimate** for Phase I - Streetscape Infrastructure anticipated schedule duration estimate.

IV. ASSUMPTIONS

Consistent with the provisions of this Agreement (including without limitation Paragraph I above), PUBLIC WORKS will provide project management, construction management and construction administration services for the Phase 1 Project.

1) PUBLIC WORKS team with assistance from OCII Design Review staff will ensure that any design modifications during the Phase 1 Project construction phase are consistent with its approvals and per the requirements of this Agreement, the Redevelopment Plan, the Transbay Development Controls and Design Guidelines ("**DCDG**") and all ancillary Redevelopment Plan documents.

2) PUBLIC WORKS PM and CM will coordinate Phase 1 Project meetings.

3) PUBLIC WORKS PM will provide reasonable services required to coordinate the Phase 1 Project's streetscape design improvements and signalized crossings with other projects' street improvement designs immediately adjacent to the Phase 1 Site including:

a. coordination meetings with the Transbay Block 2 developers and their contractor,
b. Clementina Street sidewalk design and adjacent scopes of work by the Transbay Block 2 developers, and
c. the abutting Beale and Main Street improvement projects designed by other City agencies.

4) Additionally, PUBLIC WORKS Design Lead, and City design team will coordinate with OCII project teams: specifically, the adjacent Block 2 developer teams regarding the Clementina Street extension at its interface with the Block 2 development.

It is anticipated that the Phase 1 Project's PUBLIC WORKS PM and PUBLIC WORKS Design Lead will attend the monthly ITF meetings no more than four times a year with adjacent project managers and leads. Smaller-focused group meetings to address specific coordination needs between key design and engineering staff of the Phase 1 Project and the Block 2 development are anticipated to require a monthly meeting or additional as-needed meetings for coordination during construction.

5) It is anticipated that the Phase 1 Project Team will meet to coordinate with other City agency projects teams such as the SFMTA-sponsored Beale and Main Street Improvement projects and the SFPUC-sponsored Beale and Main Street sewer replacement projects, given the extent of overlap and complexity of the proposed new streetscape improvements on Beale and Main Streets. Where possible, the number of meetings will be reduced by combining meeting team meetings as well as limiting attendees to only those required for coordination.

6) Site visits during construction to inspect the sidewalk scope of work adjacent the ROW will be performed by SFMTA Engineers, and the streetscape lighting will be reviewed by SFPUC staff.

7) PUBLIC WORKS DAC will provide federal Americans with Disabilities Act ("**ADA**") compliance review of Phase 1 Project during construction to ensure the installations meet federal, state and local requirements. The DAC will review and approve change orders as required.

8) PUBLIC WORKS SAR will provide environmental reviews during site demolition, excavation and hazardous soil and/or materials disposals. Construction support includes review of construction submittals, overseeing the field work of PUBLIC WORKS environmental consultants and providing support for environmental issues during construction, and attending meetings during construction.

9) PUBLIC WORKS Project Management Analyst will assist with funding allocations, funding transfers between city departments, budget forecasting, invoicing, payments and monitoring expenditures with assistance from PUBLIC WORKS accounting.

10) PUBLIC WORKS Construction Managers will provide construction management services during construction phase and close out period.

V. EXCLUSIONS AND ADDITIONAL SERVICES

The services and/or tasks listed below are not included in PUBLIC WORKS scope of work. OCII may request PUBLIC WORKS to include such services and/or tasks as an Additional Service (as defined in Section VI.2. Scope Changes) Additional Services may be added to the Scope through the process set forth in Section VI.2.

1) The following services are excluded and would be additional to the scope of services if requested:
   a. services requested by OCII or other City Regulatory Agencies beyond what is outlined in this MOU;
   b. any additional scope related PUBLIC WORKS staff and professional services during construction administration, management and oversight;
   c. PUBLIC WORKS services to make any OCII requested changes to the bid documents after award of bid;
   d. any changes in the design required during construction for coordination with adjacent projects;
   e. new OCII requested deliverables beyond those listed in this Agreement and its attachments;
   f. revisions requested by OCII to work previously approved;
2) Any rate increases not already included in cost estimate, as PUBLIC WORKS isn't responsible for fee changes made by other City Agencies;
3) Costs associated with value-engineering;
4) Services required for re-advertisement of the Phase 1 Project construction contract;
5) PUBLIC WORKS isn't responsible for budget/fee changes made by SFMTA, SFPUC, PUBLIC WORKS or any of the consultants included in this MOU, in the event that OCII increases the Phase 1 Project's scope;
6) Services made necessary by reversals of authorizations, approvals or instructions previously given by OCII staff, OCII Commission, other City authorities or regulatory agencies;
7) Services made necessary by changes in codes, regulations or interpretations during the term of this Agreement that were not and could not have been anticipated by PUBLIC WORKS, and which result in a substantive change to the drawings. PUBLIC WORKS shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. PUBLIC WORKS shall provide ongoing consultation and advice to OCII regarding new code changes and interpretations that may affect construction;
8) Services made necessary by conflicts between approvals and/or requirements by City agencies;
9) Coordination, management and preparation of presentation documents to the CAC and OCII Commission are not included in this scope;
10) Any MMRP submittals to the State or reporting to the State. PUBLIC WORKS shall only monitor compliance by the construction contractors and complete the post construction MMRP checklist for OCII;

11) Services relative to detailed investigation, surveys, valuations, inventories, testing or appraisals of elements including but not limited to existing building and site conditions, the surrounding public ROW, landscaping, facilities, equipment or furnishings, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by others;
12) Services required in connection with construction performed by others that is not part of the Phase 1 Project;
13) Preparing as-built record drawings showing changes in the MOU Activities work made during construction (This is however required of the construction contractor per contract);
14) San Francisco Planning Department General Plan Referral; Notice of Exemption ("**NOE**") from the California Environmental Quality Act ("**CEQA**"); Environmental review and clearance; other planning or environmental review as required for the Phase 1 Project (not required because the work to be performed is categorically exempt from CEQA pursuant to CEQA Guidelines Sections 1530l(a) and 1530l(d); and because OCII, rather than the San Francisco Planning Department, holds jurisdiction over planning code and environmental review of projects in the Transbay Redevelopment Project Area);
15) Any additional surveys to those provided in previous Block 3 MOUs between the Parties, surveys indicating site boundaries, utilities, location of structures, topographic information and services associated with surveying;
16) Peer review of other adjacent project's designs;
17) Services required for Leadership in Energy and Environmental Design ("**LEED**") certification. LEED certification is not required for the Phase 1 Project and was not requested by OCII.
18) Services for commissioning for green building requirement is not required for the Project;
19) Services required in connection with construction performed by others that is not part of the Phase 1 Project, including archaeological assessment, underground pipelines assessment, biotic and biological studies, and additional construction phase environmental support services not specified in this Agreement.

VI. PROJECT COST CONTROLS BUDGET

1. **Project Cost Controls Budget.** Project costs for PUBLIC WORKS, SFMTA and SFPUC services are based on PUBLIC WORKS and OCII's agreement regarding the Phase 1 Project scope, schedule, and budget. The Phase 1 Project costs are listed in the "Project Construction Cost Controls Construction Budget" (see **Attachment 3**), and OCII will fund all City agency services performed under this Agreement on a reimbursable basis to PUBLIC WORKS. The "Project Construction Cost Controls Construction Budget" is a Total Not-To-Exceed Cost of **Eleven Million, Four Hundred and Sixty-Three Thousand, Six Hundred and Twenty-Four Dollars ($11,463,624).**

   PUBLIC WORKS, PUC and SFMTA cost proposals include fiscal year increases, tied to union contract City staff salary increases, which is calculated and added to the respective proposals for each agency and for each separate project phase whose duration is based on the schedule approved by OCII and PUBLIC WORKS. Delays in the schedule can impact the fiscal year increase calculation and may require additional fees, and therefore OCII Commission approval.

2. **Scope Changes.** PUBLIC WORKS PM shall consult OCII PM in advance of authorizing any City agency requests for additional scopes of work not covered by this Agreement, scope changes to the Phase 1 Project that exceed $50,000, including additional scopes of work as requested by OCII ("Additional Service"). Upon receipt of any such request from PUBLIC WORKS regarding an Additional Service, OCII shall review the submittal and, as set forth in

services listed below, either provide written authorization for the Additional Service and determine whether the change in scope requires OCII Commission approval or deny the request and set forth the reason(s) for the denial.

Any proposed scope additions that would exceed the Project Cost Controls Budget limit must first be approved by the OCII Commission. Any such scope additions requiring use of contingency must not cause the Project Cost Controls Budget to surpass the not-to-exceed amount of **Eleven Million, Four Hundred and Sixty-Three Thousand, Six Hundred and Twenty-Four Dollars ($11,463,624)**.

3. **Use of Fee Contingencies.** The purpose of the fee contingencies is to cover services provided by City agencies, consultants or specific Phase 1 Project scopes of work necessary to complete construction of the project that exceed the original line-item budgeted amounts for City agency services established in the Project Cost Controls Budget. PUBLIC WORKS and OCII have agreed to budget a 15% contingency in the Project Cost Controls Budget for consultant and City agency design and engineering fees. PUBLIC WORKS PM shall be allowed to authorize the City Design Team to utilize up to 100% of the fee contingency for necessary design services to complete project tasks within the scope of this Agreement. However, the PUBLIC WORKS PM will inform the OCII PM of the City Design Team's need to utilize the fee contingency, and the PUBLIC WORKS PM will also include a report regarding the use of contingencies when submitting quarterly invoices to the OCII PM.

4. **Fee Schedule.** The fee schedule for PUBLIC WORKS services is based on the Parties' understanding of the construction scope and schedule, deliverables at the time of this Agreement. PUBLIC WORKS shall inform OCII in advance of (i) any costs that exceed the allocated budget line item including its contingency amount, and (ii) any work that is anticipated to exceed the agreed-upon scope of services set forth in this Agreement. SFPW shall provide a detailed description and reason(s) for any add-service requests for scopes of services not covered by the construction contingency budget. OCII shall review add-service requests as expeditiously as possible so as not to delay construction. OCII will respond to add-service requests within a maximum of 5 business days by written authorization or written denial of the request and set forth the reason(s) for the denial. Both parties agree and understand that during the term of this MOU any budget revisions, including use and/or reallocation of project contingencies, will require notification of the changes to OCII.

   Where the PUBLIC WORKS PM identifies an adjacent jurisdictional agency impact or adjacent construction impact to the Phase 1 Project, PUBLIC WORKS PM will review the matter with the OCII PM to review scope and cost impacts. OCII is providing the funds to construct the entirety of the Phase 1 Project based on the final pricing (including contingency amounts). If PUBLIC WORKS proposes additional scope beyond the scope of the bid documents and final pricing upon which acceptance of public streetscape portions of the Phase 1 Project are contingent, OCII shall not be responsible for those added costs. The OCII PM must approve the cost impacts resulting and any additional services associated with a budget increase.

5. **Printing Costs Reimbursement.** OCII will reimburse PUBLIC WORKS for any printing or mailing costs required for the Phase 1 Project, including but not limited to public outreach,

permitting, advertisement of bids and public presentations. A budget line for such printing or mailing costs is included in the Project Cost Controls Budget.

6. **Allowances.** Allowances for potentially necessary fees and services are included in the total Project Controls Budget (see **Attachment 3**) and will be contracted through PUBLIC WORKS either directly or as as-needed services through PUBLIC WORKS consultant pool, and include the following services or activities: Archeologist, SF Planning reviews related to archeology, additional services related to the MMRP, and additional City agency fees or permits. The Project Controls Budget also includes allowance for additional costs to construction due to unanticipated additional soil off haul or removal of foundations as well as other unforeseen conditions. Allowance is included for additional investigations required during construction such as soil or geotechnical borings, potholing, flow tests or surveying required outside of the construction contract.

VII. FINANCIAL OVERSIGHT, INVOICE PAYMENTS, AND AUDITS

PUBLIC WORKS and OCII agree to the accounting methods and procedures under this Agreement, which are intended to establish accounting activities and communications by and between OCII and PUBLIC WORKS.

1. **Spending Authority.** OCII has the contractual authority to develop the Block 3 Project, and therefore the Phase 1 Project, under the Transbay Redevelopment Project Implementation Agreement (January 20, 2005), and the expenditure authority under the approved Recognized Obligation Payment Schedule ("**ROPS**") Line 431 providing funding for the Phase 1 Project. OCII funding includes OCII issued bond proceeds and Transbay Park Fees. PUBLIC WORKS, SFPUC, and SFMTA will establish estimated revenue and expenditure appropriations in the appropriate capital project structure and the City's Financial System Project chart fields.

2. **Evidence of Funding for Construction.** Prior to PUBLIC WORKS awarding the bid for construction contract for a qualified general contractor, OCII shall demonstrate in the form of an approved resolution issued by the OCII Commission the full amount of construction funding (both hard and soft construction funding including the engineer's construction estimate, demolition and hazmat remediation, transportation and disposal costs, project and construction management, construction administration and all other hard and soft costs anticipated and required for the Phase 1 Project construction and close out), and the associated hard and soft cost contingency. PUBLIC WORKS will set up initial funding for the construction of the project. OCII will reimburse PUBLIC WORKS in full for encumbrances and costs of work covering the Phase 1 Project phases between bid award through construction completion and close out.

3. **Details of Payments & Funding.** OCII will provide evidence of secured funds to PUBLIC WORKS such that OCII can reimburse PUBLIC WORKS for all costs agreed to in this Agreement including the approved and awarded construction contract. PUBLIC WORKS will submit a Project Reimbursement Application (which will include all billings, including documents supporting all charges) to OCII on a quarterly basis. Payment to PUBLIC WORKS will be made no later than 30 days following OCII's approval of each Project Reimbursement Application. Since this is a reimbursable arrangement, PUBLIC WORKS is required to incur the costs ahead of payment from OCII.

4. **Lead Agency.** PUBLIC WORKS will act as the City's lead agency to facilitate coordinated review of Project Reimbursement Applications from SFMTA, PUC and other City Agencies.

5. **Supporting Cost Documentation.** On a quarterly basis, PUBLIC WORKS shall review for accuracy and submit all appropriate support (invoices, timesheets, etc.) for labor and non-labor costs performed by PUBLIC WORKS and other City Departments. PUBLIC WORKS will submit payments to other City Departments within 15 days from approval of the supporting cost documentation. Supporting documentation must include any monthly emailed notifications related to use of the Project Controls Budget contingencies.

6. **Financial Recording.** All expenses related to the Phase 1 Project are capital in nature. All expenses for the Phase 1 Project will be recorded in the respective Department's project structure and reported to the Controller's Office for proper recording in the City's financial system, PeopleSoft. It is OCII's responsibility to notify the Controller's Office that the Phase 1 Project is completed and can be capitalized as defined by Controller's Office Fixed Assets Defections and Guidelines.

7. **Audits.** PUBLIC WORKS shall make available to OCII upon request all personnel time records, contractual records, and other records used to justify reimbursement within a reasonable period of time, not-to-exceed thirty (30) days from the date PUBLIC WORKS receives a written request.

8. **Record Retention.** PUBLIC WORKS will follow the record retention and storage policy as outlined in Department Procedure 2.1.5.

VIII. INDEMNITY AND INSURANCE

1. **Indemnification**

a. General Indemnification. To the fullest extent allowable by law, each Party shall hold harmless, defend at its own expense and indemnify the other Party and its respective commissioners, members, officers, agents and employees ("**Indemnitees**") against any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, arising directly or indirectly from all acts or omissions to act of the indemnifying Party or its officers, agents, employees or invitees in rendering services under this MOU; excluding, however, such liability, claims, losses, damages or expenses as arise from the indemnified Party's gross negligence or willful acts and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, the indemnifying Party, its officers, agents or employees. In addition to its obligation to indemnify, each indemnifying Party specifically acknowledges and agrees that it has an immediate and independent obligation to defend the other Party from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or maybe groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the indemnifying Party by the other Party and continues at all times thereafter. This section does not apply to contracts for construction design services provided by a design professional, as defined in California Civil Code Section 2782.8.

b. **Indemnification for Actions of City's Contractors.** The Parties understand that City, as a contractor to OCII under the MOU, has and will enter into contracts with third parties to perform construction services on the Phase 1 Project in accordance with this MOU. Each City contractor shall hold harmless, defend at its own expense, and indemnify the City, OCII, and their respective commissioners, members, officers, agents and employees for any and all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees ("**Losses**"), directly or indirectly arising out of, connected with or resulting from the performance of the City contractor under those contracts. In addition to its obligation to indemnify, the City contractor shall specifically acknowledge and agree that it has an immediate and independent obligation to defend the

Indemnitees from any claim which actually or potentially falls within the indemnification provision, even if the allegations are, or may be, groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the indemnifying party by the other party and continues at all times thereafter.

c. **Access Indemnification**. City shall defend, hold harmless and indemnify the Indemnitees of and from any and all losses arising out of or resulting from entry onto the Permit Area, as defined in Section XIII (1) below**,** by City or its invitees but excluding contractors, and excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

d. **Indemnification by Design Professionals**. City shall include an indemnification in any contract with a design professional as defined in California Civil Code Section 2782.8 who is or will provide professional services as part of, collateral to, or affecting this Agreement ("**Design Professiona**l"). Each Design Professional who will provide design services shall defend, hold harmless and indemnify OCII, the City and their respective commissioners, members, officers, agents and employees of and from any and all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. It is expressly agreed and understood that the duty of indemnification pursuant to this section is to be interpreted broadly to the greatest extent permitted by law, including but not limited to California Civil Code Section 2782.8.

2. **Hazardous Material Acknowledgement and Indemnification**

a. **Hazardous Material Acknowledgement**: City recognizes that, in entering upon the Permit Area and performing the activities under this MOU, the City may be working with, or be exposed to substances or conditions which are toxic or otherwise hazardous. City and OCII will rely on contractors to identify and evaluate the potential risks involved, to take all appropriate precautions to avoid such risks, and, to the fullest extent allowable by law, to hold harmless, defend at their own expense, and indemnify the City, OCII, and, their respective commissioners, members, officers, agents and employees for Losses arising directly or indirectly from all acts, or omissions to act, of the contractor in undertaking MOU Activities.

b. **Proper Disposal of Hazardous Materials**: City shall require its contractors to assume sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with entry and/or the MOU Activities, including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of hazardous substances to the extent required in connection with any MOU Activities hereunder and environmental compliance requirements.

c. **Toxics Indemnification**. City shall include its standard environmental notification, release, and indemnity provisions in contracts entered into by the City for the MOU Activities for the benefit of City and OCII. OCII shall have approval rights over such provisions.

d. **Hazardous Substances**. For purposes of this MOU, the term "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U. S. C. Section 9601(14), and in addition shall include, without limitation, petroleum, (including crude oil or any fraction thereof), asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCB"), PCB-containing materials, all hazardous substances identified at California Health & Safety Code Sections 25316 and 25281(d), all chemicals listed pursuant to California Health & Safety Code Section 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under applicable state or local law.

e. **Environmental Laws**. For purposes of this MOU, the term "Environmental Laws" shall include but not be limited to all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements, related to the MOU activities.

f. **Release**. For purposes of this MOU, the term "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. **Soils Investigation**. City warrants and covenants as follows:

(1) If the MOU Activities involves any soils investigation involving the drilling of holes having a diameter dimension that could create a safety hazard for persons, City or its agents shall carefully safeguard said holes during any drilling operations and shall upon the completion of said drilling operations refill (and compact to the extent necessary) to the level of the original surface penetrated by the drilling.

(2) OCII has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Permit Area. City shall cause its contractors to locate the same and to protect the same from damage. City's contractors shall be solely responsible for any damage to utilities or damage resulting from any damaged utilities. Prior to the start of the MOU activities, the City's contractors shall contact Underground Services Alert for assistance in locating existing utilities at (800) 642-2444. Any utility conduit or pipe encountered in excavations not identified by Underground Services Alert shall be brought to the attention of OCII immediately.

(3) All soils test data, and reports prepared or based thereon, obtained from these activities ("Testing Information") shall be provided to the OCII upon request and the OCII may use said Testing Information for whatever purposes it deems appropriate, provided that the OCII assumes all risk of use of the Testing Information for purposes other than the MOU Activities and the intended purpose of the reports, i.e., the construction of the Phase 1 Project. OCII acknowledges that City is not providing any advice to OCII, whether legal or otherwise, by providing the Testing Information unless OCII is using the Testing Information for purposes related to the MOU Activities.

(4) The City or its agents shall refill and compact any hole drilled and shall carefully safeguard and secure the hole, the drilling work area and any equipment if left on or near the Permit Area after the completion of each day's work.

3. **Insurance**.

a. **City Insurance.** The Parties acknowledge and agree that the City self-insures in the areas of general liability, automobile liability and workers' compensation and that such self-insurance shall cover any losses, claims or damages incurred by the City directly or indirectly arising out of or connected with this MOU, and any City's activities under this MOU, excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified or held harmless. However, at its sole discretion, City may purchase a policy of insurance to cover against any potential exposure to loss under this Agreement.

b. **City Contractor Insurance**. City shall require that all contractors performing work on the Phase 1 Project shall purchase and maintain in force throughout the performance of work the insurance provided in City Contractor Insurance Provisions (refer to contract specification 00 73 16). City will further require that all contractors performing work on the Project name "Office of Community Investment and Infrastructure/Successor Agency to the Redevelopment Agency of the City and County of San Francisco and its commissioners, members, officers, agents and employees" as an additional insured under their Project insurance policies. Should OCII request additional insurance requirements after PUBLIC WORKS has awarded a contract, any increase in cost resulting from the addition of insurance requirements will be project costs that are reimbursable by OCII, provided OCII may elect to reduce or otherwise alter insurance requirements as needed to contain costs. Increases in Phase 1 Project costs resulting from PUBLIC WORKS contractors' compliance with OCII additional insurance requirements shall not increase the total Project Controls Budget for construction. Instead, with OCII approval, such cost increases shall be drawn against a contingency within the total Project Controls Budget. The Parties agree to meet and confer in good faith to ensure that any additional OCII insurance requirements are satisfied. If no PUBLIC WORKS contractor can satisfy OCII requirements, there will be no PUBLIC WORKS obligation to proceed unless or until the parties reach agreement on the applicable insurance requirements.

IX. DISPUTE RESOLUTION

PUBLIC WORKS and OCII agree that this Agreement provides a general description and understanding of the services to be provided, and of the schedule and costs associated with these services. The respective managers of PUBLIC WORKS and OCII shall make good faith efforts to resolve disputes arising out of this Agreement expeditiously. If PUBLIC WORKS has a billing dispute with OCII, it must attempt to resolve it with the OCII PM and the OCII Deputy Executive Director for Finance and Administration. In the case of a dispute involving the transfer of monies to PUBLIC WORKS to resolve insufficient funds, a temporary stop date will be placed on the Project Identification Number preventing PUBLIC WORKS staff from working on the Phase 1 Project until the funds are received. If an agreement over the dispute cannot be reached, the PUBLIC WORKS Deputy Director of Finance and Administration and the OCII Deputy Executive Director for Finance and Administration will meet with the City Controller's office (or other mutually agreed party) to finally resolve the matter.

X. ENTIRE AGREEMENT

This Agreement including the Attachments 1 - 11 set forth the entire agreement between OCII and PUBLIC WORKS and supersedes all other prior written or oral provisions. This Agreement has been drafted through a cooperative effort, and both Parties have had an opportunity to have their respective legal counsels review and edit the Agreement prior to its execution. Neither Party shall be considered the sole drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

XI. GOVERNING LAW

All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

XII. SEVERABILITY

The invalidity or unenforceability of a particular provision of this Agreement shall not affect the other provisions hereof.

XIII. RIGHT OF ACCESS/PERMIT TO ENTER

OCII grants to the City, acting by and through PUBLIC WORKS, a non-exclusive permit to enter upon certain OCII-owned real property more particularly shown in **Attachment 10 - Permit Area** upon the following terms and conditions:

1. **Permit Area**. The Permit Area includes Lot 4 to construct the new Clementina Street and a portion of Lot 3 measured at twenty-five feet north of Lot 3's southern property line for Phase 1 Project staging, lines more particularly shown in Attachment 10. The Permit is non-exclusive and is subject to the rights of ingress and egress by OCII, and others who are authorized to access portions of the Permit Area.

2. **MOU Activities**. The City shall use the Permit Area to manage construction work as described in this Agreement. No uses other than those described in this Agreement are authorized. City will coordinate with Adjacent Users in its uses of the Permit Area to resolve any potential conflicting uses. .

Notwithstanding the foregoing, City understands and agree that, if City and the developers of the Transbay 2 Residential Project cannot resolve a dispute related to uses of the Permit Area, uses required for the Transbay 2 Residential Project will take precedence.

3. **Time of Entry.** The General Contractor shall not access the Phase 1 Site for construction of the new Clementina Street ROW until January 17, 2025, due to adjacent Block 2 construction and staging required on the parcel that will ultimately comprise the new Clementina Street ROW. Access to the non-Clementina Street ROW portions of the Phase 1 Site may commence on the date this Agreement is fully executed at 8:00 a.m. and shall terminate at the end of the Term of this Agreement, unless extended by mutual agreement of OCII and City, or earlier terminated by OCII's Executive Director upon 24 hours' notice, or earlier terminated by City by cessation of activities and/or operations.
PUBLIC WORKS shall provide at least 14 days' prior written notice to OCII of the General Contractor's Notice to Proceed allowing contractor(s) entry onto the Permit Area. In addition, PUBLIC WORKS shall provide, and shall require its contractors to provide, OCII with at least one-week prior notice if construction activities will result in a planned disruption of utilities, for example, irrigation, electrical, telecommunications, and security to adjacent OCII properties outside of the construction limit of work. Such disruptions shall be limited to the minimum duration reasonably necessary.

To the extent OCII has provided PUBLIC WORKS with a schedule of events taking place at adjacent properties, PUBLIC WORKS shall take these events into account and seek to avoid disturbance to these events where possible when planning construction activities.

4. **Compensation**. Since this permit to enter is required in order to permit City to conduct certain of the MOU Activities, City shall pay no compensation to OCII for City's use of the Permit Area.

5. **"As Is", Maintenance, Restoration, Vacating**. The Permit Area is accepted "AS IS" and entry upon the Permit Area by City is an acknowledgment by City that all dangerous places and defects in the Permit Area are known to it and are to be made secure and kept in such secure condition by City. City shall maintain those portions of the Permit Area upon which it performs activities permitted in this Agreement so that it will not be unsafe, unsightly or unsanitary. Upon termination of the Permit, City shall vacate the Permit Area and remove any and all personal property located thereon and restore the Permit Area to its condition at the time of entry. OCII shall have the right without notice to dispose of any property left by the City after it has vacated the Permit Area. OCII makes no representations or

warranties, express or implied, with respect to the environmental condition of the Permit Area or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws.

6. **Entry under City Authority**. The Permit granted City for the MOU Activities shall include all City contractors, subcontractors, agents, invitees and employees. In this regard, the City assumes all responsibility for the safety of all persons and property and any contents placed in the Permit Area pursuant to this Permit. All MOU Activities performed in the Permit Area and all persons entering the Permit Area and all property and equipment placed therein in furtherance of the permission granted in this Agreement is presumed to be with the express authorization of the City.

XIV. LIABILITY OF PARTIES

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

XV. CONFIDENTIAL INFORMATION

In the performance of this Agreement, City and OCII may have access to, or collect, data which may include proprietary or confidential information that if disclosed to third parties may damage City or OCII. Any proprietary or confidential information must be held in confidence and used only in performing the Agreement.

XVI. ATTACHMENTS:

Attachment 1: Phasing Plan
Attachment 2: Recorded Transfer Map
Attachment 3: Construction Cost Control Budget
Attachment 4a: Public Works Engineers' 100% CD Estimate and the Final Reconciled Averaged Bid Estimate (Advertised Engineer's Estimate)
Attachment 4b: MLEE 100% CD Estimate
Attachment 5: Advertisement for Bid
Attachment 6: Environmental Commitment
Attachment 7: OCII SBE Policy
Attachment 8: Bid Outreach Strategies
Attachment 9: Schedule Duration Estimate
Attachment 10: Permit Area
Attachment 11: Specification 007316 Insurance Requirements
Attachment 12: Contract Specifications and Addendum related to Hazardous Material Acknowledgement and Indemnification