

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 07-2025

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 PRECONSTRUCTION PROFESSIONAL SERVICES TO SUPPORT THE DELIVERY OF THE TRANSBAY UNDER RAMP PARK PROJECT IN AN AMOUNT NOT TO EXCEED \$3,469,271 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, The Redevelopment Plan for the Transbay Redevelopment Project Area (“Redevelopment Plan”) was adopted in 2005 with the purposes of alleviating blight in the project area and 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, The Transbay Redevelopment Project Area Implementation Agreement (the “Implementation Agreement”) is an enforceable obligation that requires the Office of Community Investment and Infrastructure (“OCII”), as the Successor Agency (the “Successor Agency”) to the former San Francisco Redevelopment Agency (the “Former Agency”), to among other things, “execute all activities related to the implementation of the Transbay Redevelopment Plan, including but not limited to, activities related to major infrastructure improvements.” (Section 2.1 (d) of the Implementation Agreement at p. 4) 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 will not require additional DOF review in the future, although expenditures under the Implementation Agreement are subject to continuing DOF review; and,

WHEREAS, In 2006, in furtherance of the Redevelopment Plan and the Transbay Redevelopment Project Area 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 Commission of the Former Redevelopment Agency of the City and County of San Francisco (“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 new street extensions, pedestrian improvements and other streetscape improvements to enhance and complete the vision for the Transbay Redevelopment Project Area (“Project Area”); and,

WHEREAS, In accordance with the Streetscape and Open Space Plan and the Implementation Agreement, OCII is responsible for developing streetscape improvements and public open spaces not planned for private development under the Redevelopment Plan, including within the underutilized areas under the bus and freeway ramps near Essex, Folsom, Clementina, Tehama and Howard Streets, between First and Second Streets; and,

WHEREAS, In July 2011, the Former Agency entered into an agreement (“Contract”) with CMG Landscape Architecture (“CMG”) to complete design documents for select elements of the Streetscape and Open Space Plan including for the underutilized areas under the bus and freeway ramps and streetscape improvements to Folsom and Essex Streets, all of which is also known as the Under Ramp Park Project (or the “Project”); and,

WHEREAS, Under the Transbay Redevelopment Plan, OCII has land use authority over those portions of the Project in Zone 1 of the Project Area. Under a Delegation Agreement dated May 3, 2005, between the Former Agency and the Planning Department (“Delegation Agreement”), OCII delegated to the Planning Department its land use authority in Zone 2, which is subject to the Planning Code, as amended from time to time. Even though OCII has delegated its land use authority to the Planning Department in Zone 2, OCII retains land use authority over the portion of the Project located in Zone 2 of the Project Area because the OCII funding of the Project constitutes “Agency Action” under the Delegation Agreement. The Planning Code, however, continues to apply in Zone 2; and,

WHEREAS, In 2022 the Successor Agency Commission (“OCII Commission”) approved, by Resolution No. 2-2022, a nonbinding term sheet describing the roles and responsibilities of the various agencies involved in the development and operation of the Project (the “Term Sheet”). Under the Term Sheet, the TJPA would continue to own most of the Project site and would lease remaining portions of the site from Caltrans for the purpose of developing the Project. Per the Term Sheet, TJPA would delegate operations and maintenance responsibilities for the Project to the East Cut Community Business District (“ECCBD”); and,

WHEREAS, San Francisco Public Works (“SFPW”) is the City agency responsible for infrastructure improvements within the public right-of-way and has extensive experience in coordinating the design review process among the affected City entities and utility providers. For these reasons, in 2018, OCII executed a Memorandum of Understanding with SFPW (“2018 MOU”) to provide professional services for the Project (Resolution No. 36-2018). Professional

services under that agreement, which totaled \$6,521,327, included project management, design peer review by City Architects and Engineers, reviews by Disabled Access Coordinators, construction contract preparation, bid, advertisement and award, site assessment remediation services, construction management services, and as-needed consultant services; and,

WHEREAS, In late September 2018 fissures were discovered in two beams at the newly completed Salesforce Transit Center (“STC”), after which Project planning was put on hold from late 2018 to early 2021. OCII resumed work on the Project in 2021 and by the fall of 2022 OCII’s consultant CMG updated the Project’s 2018 Schematic Design. The 2023 amendment to the contract between OCII and CMG provided for the completion of the Project Schematic Design for approval by the OCII Commission, and subsequently by the TJPA Board; and,

WHEREAS, On June 6, 2023, the OCII Commission conditionally approved, by Resolution No. 20-2023, the Project’s Schematic Design. On June 8, 2023, the TJPA also conditionally approved the Schematic Design; and,

WHEREAS, On October 3, 2023, the OCII Commission approved, by Resolution No. 30-2023, a Fifth Amendment to the Contract between OCII and OCII’s consultant CMG to complete the design and engineering of the Project in preparation for future contractor bidding and construction; and,

WHEREAS, The 2018 MOU had a term of four years and has expired. Completion of City reviews and permitting for the Project requires that OCII and SFPW enter into an amended and restated contract. This amended scope of services excludes the construction management scope of work that was included in the 2018 MOU and streamlines the scope of professional services to include: (1) SFPW project management, (2) Disability Access Compliance Reviews, (3) Hydraulic Engineering Services and Peer Review, (4) Constructability Review, (5) Civil Engineering Peer Review, (6) Environmental Site Assessment and Mitigation services, (7) Utility Provider and City Agency Engineering and Reviews, (8) Recreation and Parks Department ‘Best Practices’ Peer Reviews, (9) Contract Monitoring Division coordination, and (10) as-needed consultant services; and,

WHEREAS, To ensure timely Project delivery, OCII staff recommends that the Commission authorize the OCII Executive Director to enter into an amended and restated contract with SFPW for a total amount not to exceed \$3,421,735 (“Amended MOU”), which includes approximately \$650k owed to the SFPW for services already provided between November 2023 and the date of approval of the Amended MOU; and,

WHEREAS, On April 20, 2004, 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 ten addenda to the FEIS/EIR were prepared between June 2, 2006, and October 26, 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 in accordance with the Redevelopment Plan and the Design for Development for the Transbay Redevelopment Project. The FEIS/EIR described and studied the Transbay Redevelopment Project Design for Development Vision (“D4D Vision”), which calls out Oscar Park, also known as Under Ramp Park. The Transbay FEIS/EIR studied a land use program that included in its Land Use Plan the open space designated as Oscar Park in the D4D Vision as well as open spaces under the bus and freeway ramps, all of which combined, cover the land area designated for the Project; and,

WHEREAS, In addition, the TCDP FEIR analyzed potential environmental effects associated with the November 2009 Transit Center District Plan project at a program level. It cites the 2006 Streetscape and Open Space Plan for the Transbay Redevelopment Area, which called for the development of a pedestrian and open space network in the under-ramp areas aligned with the Project. Furthermore, the TCDP EIR analyzed a Multi-Modal Pathway, including a pedestrian connection and two-way bicycle paths below the bus ramps, as proposed in the implementation of the Project; now, therefore, be it

RESOLVED, That the Commission, acting as Lead Agency under CEQA for approval of the Project, finds and determines that the Project is within the scope of the projects analyzed in (1) the Transbay FEIS/EIR, certified by the San Francisco Redevelopment Agency as a co-Lead Agency and for which it adopted findings and a statement of overriding considerations as Lead Agency, and (2) the TCDP FEIR, certified by the City, through its Planning Commission, as Lead Agency and for which OCII, through its Commission, adopted findings and a statement of overriding considerations as a Responsible Agency in its approval of the Folsom Streetscape Improvement Project, and requires no further environmental review beyond the Transbay FEIS/EIR and the TCDP FEIR pursuant to CEQA and CEQA Guidelines Section 15180, 15162, and 15163 for the following reasons:

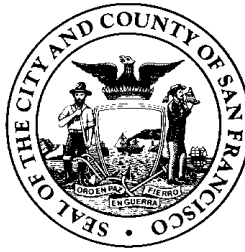
- 1) implementation of the Project does not require major revisions in the Transbay FEIS/EIR and the TCDP FEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and,
- 2) no substantial changes have occurred with respect to the circumstances under which the actions analyzed in the Transbay FEIS/EIR and the TCDP FEIR will be undertaken that would require major revisions to the Transbay FEIS/EIR and the TCDP FEIR due to the involvement of new significant environmental effects, or a substantial increase in the severity of effects identified in the Transbay FEIS/EIR and the TCDP FEIR; and,
- 3) no new information of substantial importance to the actions analyzed in the Transbay FEIS/EIR and the TCDP FEIR has become available which would indicate that (A) the Project will have significant effects not discussed in the Transbay FEIS/EIR and the TCDP FEIR; (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 Transbay FEIS/EIR and the TCDP FEIR, will substantially reduce one or more significant effects on the environment.

RESOLVED, The Commission hereby approves and authorizes the Executive Director 1) to enter into the Amended MOU (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, for a not to exceed amount of \$3,469,271; and 2) to make any changes in the Amended MOU that do not materially affect its substance and that do not materially increase the obligations or liabilities of OCII.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of April 15, 2025.

Commission Secretary

Exhibit A – Under Ramp Park Professional Services Memorandum with SFPW



MEMORANDUM

To: Office of Community Investment and Infrastructure

Through: Magdalena Ryor
Public Works Building Design and Construction Bureau Manager,
Bureau of Project Management

From: Kathleen O'Day
Public Works Building Design and Construction Project Manager

Date: April 15, 2025

Subject: Memorandum of Understanding and Fee Proposal for Professional Services for **Transbay Under Ramp Park Project**

San Francisco Public Works ("**Public Works**" or "**City**") is pleased to submit this Memorandum of Understanding ("**MOU**" or the "**Agreement**") and fee proposal to provide professional services to 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**") in the predevelopment phase of the **Transbay Under Ramp Park Project** ("**URP**" or the "**Project**"). Public Works professional services include project management, site assessment remediation services, regulatory affairs services, City attorney services, disability access coordinator reviews, hydraulic engineering services and peer review, civil engineering peer reviews, construction management constructability reviews, contract preparation, contract administration, accounting and analyst services, bid advertisement and award of contract for construction. Public Works will coordinate City agency reviews from design development through construction document phases including but not limited to, Public Utilities Commission Power, Stormwater and Lighting divisions; Public Works Bureau of Street Use and Mapping; Department of Public Health; Department of Building Inspection; Municipal Transportation Agency services; and reviews and Recreation and Parks Department best-practices reviews. The Public Works Project Manager will submit preconstruction City permit and City utility applications and manage review meetings and correspondence. Public Works services include presentations to the Public Works Commission, the OCII Commission and the Board of Supervisors regarding approvals of this Agreement and the future award of the construction bid. Additional services through Public Works and its City consultant pool include environmental site assessment, cost estimating including reconciliation of cost estimates and construction schedule duration estimating. Additionally, Public Works will manage allowances for potential archeological, planning, exploratory and public outreach services if requested by OCII.

The following Agreement and associated fee proposals define the scope of services proposed to be

performed by Public Works, the City agency team and City consultants as well as the roles and responsibilities and mutual understanding with OCII, for this proposed scope of services.

If you have any questions, please contact Kathleen O'Day at 415-218-7515.

MEMORANDUM OF UNDERSTANDING

Transbay Under Ramp Park 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 per the terms of this agreement and Public Works will provide predevelopment professional services, as further described in Section IV Scope of Services (‘Scope of Services’) below, to assist in the delivery of the Transbay Under Ramp Park Project (“**URP**” or the “**Project**”). Public Works’ Scope of Services is outlined in the following Memorandum of Understanding (“**MOU**” or “**Agreement**”) for the Project, **April 15, 2025**. The Agreement terminates three years following its date of execution unless otherwise extended or earlier terminated in accordance with its terms.

Public Works will manage a City agency team, including City consultants, to provide professional services for the Project and OCII agrees to fund all city agency services covered by this Agreement on a quarterly reimbursable basis to Public Works in accordance with the Project budget and schedule for a total not-to-exceed amount of **Three Million, Four Hundred Sixty-Nine, Two Hundred and Seventy-One Dollars (\$3,469,271)**. The total Project budget includes a 15% contingency to cover both anticipated and unforeseen costs such as labor union-negotiated rate increases and additional meetings, City agency staff task hours needed to complete the Project scope. The Project’s total not-to-exceed budget also includes allowances amounting to **One Million, Two Hundred and Five Thousand Dollars (\$1,205,000)** for estimated required City agency permit and power utility fees and other City agency and City consultant services to be contracted pending OCII approval. The MOU budget covers costs from the Project’s design development phase through the construction contract award phase. OCII will retroactively reimburse Public Works for services rendered on the Project by Public Works, its consultants, and other City agencies between November 2023 and date of the approval of this MOU (an estimated total cost of \$650k).

Separate from this agreement, OCII has contracted with Conger Moss Guillard Landscape Architecture (“**CMG**”) to design and engineer the Project. Public Works and City agency team will coordinate with OCII’s consultant CMG throughout the Project.

Public Works will provide services according to the Project schedule as described in the Agreement. The Public Works Project Manager (“**Public Works PM**”) will support, coordinate, and manage all communications between the respective agencies of the City Team (Public Works, Municipal Transportation Authority (“**MTA**”), Public Utilities Commission (“**PUC**”), Public Works Bureau of Street Use and Mapping (“**Public Works BSM**”), Department of Public Health (“**DPH**”), Department of Building Inspection (“**DBI**”), and the Recreation and Parks Department (“**RPD**”), collectively the (“**City Team**”)) and OCII. The Public Works PM will manage communications between CMG and the City Team as related to Public Works’ scope items per this Agreement. The Agreement and its attachments herein collectively contain the principal terms and conditions upon which Public Works will provide its services to the Project. Public Works Contract Monitoring Division (“**CMD**”) will prepare the construction bid package with technical specifications and construction documents provided by CMG for advertisement and award of the construction contract.

OCII has available funds in a combination of bond proceeds, Redevelopment Project Area fees, and other sources to reimburse Public Works professional services as outlined in this Agreement.

San Francisco Public Works

Recommended By:

Kathleen O'Day
Public Works Project Manager

Approved By:

Magdalena Ryor
Public Works Bureau Manager
Bureau of Project Management

Approved By:

Yadira Taylor	Date
City Attorney	

Approved By:

Carla Short	Date
Public Works Director	

Office of Community Investment and Infrastructure

Recommended By:

Ben Brandin
OCII Transbay Project Manager

Approved By:

Thor Kaslofsky
OCII Executive Director

Date

Approved As To Form By:

James Morales	Date
OCII General Counsel	

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PROJECT BACKGROUND

- A. The **URP** 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**”), the Office of Community Investment and Infrastructure (“**OCII**”), as the successor to the Former Agency, is responsible for developing infrastructure and public open spaces within the Transbay Redevelopment Project Area (“**Project Area**”).
- B. 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 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.”
- C. The Redevelopment Plan establishes the land use controls for the Project Area and divides the Project Area into two subareas: “**Zone One**” in which the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (as most recently amended, the “Development Controls”) define land uses, and “**Zone Two**” in which the San Francisco Planning Code applies. A Delegation Agreement for the Transbay Redevelopment Project Area between the Former Agency and the City’s Planning Department (the “**Delegation Agreement**”), memorializes OCII and the Planning Department’s respective land use authorities within Project Area.
- D. The Project will convert underutilized areas below bus and freeway off-ramps in the Project Area (see **Attachment 1: Property Map/Permit Area**) into a park and amenity space. While a portion of the Project site is in Zone One, most of the park’s area is in Zone Two. Under the Delegation Agreement, OCII retains land use authority over projects in Zone Two requiring “Agency Action.” OCII’s funding of URP constitutes such an Agency Action and therefore OCII may approve the project consistent with the applicable zoning under the Planning Code.
- E. Property Ownership: The TJPA owns the majority of the 2.4-acre Project site, with the California Department of Transportation (“**Caltrans**”) owning a lesser portion associated with the right-of-way of its I-80 Fremont Street off-ramp, as shown on the Property Map (**Attachment 1: Property Map/Permit Area**). The Successor Agency Commission (“**OCII Commission**”) approved, by Resolution No. 2-2022 (Jan. 18, 2022), a nonbinding term sheet describing the roles and responsibilities of the various agencies involved in the development and operation of URP (the

“Term Sheet”). Under the Term Sheet, the TJPA would continue to own most of URP and would lease remaining portions of the site from Caltrans for the purpose of developing URP.

- F. OCII contracted with Conger Moss Guillard (**“CMG”**) in 2011 to complete design documents for select elements of URP. CMG prepared a Concept Design, approved by the OCII Commission June 4, 2013, by Resolution No. 26-2013. On September 17, 2013, the OCII Commission approved, by Resolution No. 45-2013, a First Amendment to the Contract with CMG to perform additional design services including Caltrans ramps risk analysis, building design, and construction administration (**“CA”**). The Project was put on hold until March 2017 when OCII requested that CMG revise the original schematic design for the Project. On June 19, 2018, the OCII Commission approved, by Resolution No. 27-2018, a Third Amendment to the Contract with CMG to add scope to the Folsom Street Improvement Project (**“FSIP”**) and extend the term of the contract five years to June 28, 2023. On August 21, 2018, the OCII Commission approved, by Resolution No. 35-2018, a Fourth Amendment to the Contract to advance the Project by authorizing additional scopes including new design services related to revising and completing the Schematic Design, survey and geotechnical work, TJPA-required security infrastructure and safety improvements.
- G. In August 2018 OCII entered into a four-year term MOU with Public Works to provide professional services to assist in the delivery of URP, approved by OCII Commission Resolution 36-2018 (adopted August 21, 2018). Professional services under that agreement included project management, design peer review by City Architects and Engineers, reviews by Disabled Access Coordinators, construction contract preparation, bid, advertisement and award, site assessment remediation services, construction management services, and as-needed consultant services.
- H. In September 2018 the TJPA discovered fissures in two beams at the newly completed Salesforce Transit Center (**“STC”**), after which URP predevelopment work was put on hold from late 2018 through early 2021. OCII resumed work on URP in 2021 and by the fall of 2022 CMG updated the Project’s 2018 Schematic Design.
- I. On June 6, 2023, the OCII Commission conditionally approved, by Resolution No. 20-2023, the Schematic Design for URP (the **“Schematic Design”**). On June 8, 2023, the TJPA also conditionally approved the park’s Schematic Design.
- J. On October 3, 2023, the OCII Commission approved, by Resolution No. 30-2023, an Amended and Restated contract between OCII and CMG to complete the design, engineering and construction administration of the Project in preparation for future contractor bidding and construction.
- K. TJPA will own URP upon completion by OCII.
- L. Prior to award of the Project construction contract by Public Works, the OCII Commission will need to approve the Project’s total construction budget, the TJPA Board and OCII Commission will need to approve an agreement regarding the terms and conditions for construction and TJPA acceptance of the completed infrastructure, the TJPA Board will need to approve a lease or other form of agreement with Caltrans for use of the Caltrans owned or controlled portions of the Project site, and the TJPA Board and the East Cut Community Benefit District (**“ECCBD”**) will

need to approve an Operations Agreement.

- M. Prior to Public Works CMD awarding the construction contract, it is required that the Public Works Commission review and approve the award of contract to the selected construction contractor.
- N. OCII has an enforceable obligation to fund the costs of the Project and will reimburse, subject to DOF's approval of expenditures on the annual Recognized Obligations Payment Schedule and the Board of Supervisors approval of OCII's annual budget, Public Works for its professional services as part of this Agreement.
- O. On April 3, 2024, Caltrans approved the Encroachment Permit for Baseline Environmental Consulting, a California corporation, to perform pre-construction geotechnical analysis and Phase 2 Environmental Site Assessment ("ESA") on the Caltrans right of way areas of the Project site below State Highway 04-SF-80. Post Mile 5.49L, in the City and County of San Francisco.
- P. On May 10, 2024, TJPA approved a Permit to Enter Agreement ("**PTE Agreement**") dated May 1, 2024 between the TJPA and Baseline Environmental Consulting, a California corporation, in its capacity as a City contractor to Public Works, to perform Phase 2 Environmental assessment.

I. PROJECT DESCRIPTION

The Project is located in San Francisco's South of Market area, beginning south of Folsom Street at Essex Street, and continuing north to Howard Street. The URP site consists of approximately 2.4 acres and lies predominantly under the Caltrans I-80 off-ramp to Fremont Street, and the TJPA bus ramp serving the STC.

OCII contracted with CMG to prepare the design documents for URP. The Schematic Design includes an URP Pavilion building, a Concessions Building, amenity and event spaces, an outdoor concessions garden, a cycle track connection, areas for informal play, multi-sports courts, a dog zone, and pedestrian paths.

The Project will be divided within four blocks separated by public right of ways. The URP Pavilion will be located at the Folsom Street entrance to URP, and a beer garden and associated 820 square feet Concessions Building for selling refreshments is planned adjacent to Clementina Street in the center of URP. The URP Pavilion will consist of a two-story building of approximately 4,600 square feet with the upper story accessed from Folsom Street. The upper story is planned to include food-service or retail space serving park patrons and will include a small indoor seating area. In addition, outdoor seating and tables will be provided on a terrace outside the Pavilion. The lower story of the Pavilion is located at the same level as the park and provides office space and storage for the ECCBD as the park's operator. Adjacent to the ECCBD office is a flex space conference room that would be used by the ECCBD during the weekdays and will be available for community use on weeknights and weekends.

Public Works Professional Scope of Services outlined in Section IV is based on the following information provided by OCII:

1. Schematic Design Site Plan (**Schedule 1 in Attachment 2**)
2. Project Design Schedule (**Attachment 3**)

II. PROJECT TEAM

The following 5 agencies are involved in the Project with separate responsibilities and scope:

1. Office of Community Investment and Infrastructure (OCII)
2. San Francisco Public Works (Public Works)
3. San Francisco Municipal Transportation Agency (MTA)
4. San Francisco Public Utilities Commission (PUC)
5. Recreation and Parks Department (RPD)

OCII is the Project Sponsor

The OCII Project team manages communications with CMG, TJPA, Caltrans and ECCBD. The OCII Project team includes the following:

1. Transbay Project Manager (collectively with Transbay Development Specialist, “OCII PMs”)
2. Transbay Development Specialist (collectively with Transbay Project Manager, “OCII PMs”)
3. OCII Planning and Design Review staff
4. OCII Contract Compliance Division (“**OCII CCD**”)

Public Works will assist OCII with project management and professional services. The **Public Works PM** will manage the City Project Team which includes various City professionals and engineers within Public Works, other City agencies, and City consultants, fully defined below. Public Works PM will coordinate the reviews by City Agencies including but not limited to Public Works, MTA, PUC, DPH, RPD, San Francisco Fire Department (“**SFFD**”) and DBI, and assist with permit applications in coordination with OCII and CMG. As RPD will not own the Project improvements, RPD’s reviews are on an advisory basis only, providing ‘best-practices’ guidelines that OCII may choose to implement at its discretion.

The “City Project Team” is as follows:

1. Public Works

Building Design & Construction (“BDC”) Staff:

- a. Project Manager (“**Public Works PM**”)
- b. Project Management Analyst
- c. Disability Access Coordinator for Buildings and Parks (“**Architectural DAC**”)
- d. Construction Management (“**BDC CM**”) (constructability reviews)

Infrastructure Design & Construction (“IDC”) Staff:

- a. Disability Access Coordinator for Public Right of Way (“**ROW DAC**”)
- b. Site Assessment & Remediation (“**SAR**”)
- c. Regulatory Affairs Staff
- d. Hydraulic Engineering (peer review)
- e. Civil Engineering (peer review)

**Contract Monitoring Division /Small Business Enterprise Program
& Administration Staff:**

- a. Principal Accountant
- b. Contract Administration (“Public Works CA”)
- c. Contract Preparation & Project Controls
- d. City Attorney (allowance for services)

Consultants:

- a. Soil Engineer
- b. Archeologist (allowance)
- c. Cost Estimator
- d. Scheduler
- e. Public Relations/Outreach (allowance)

2. San Francisco Municipal Transportation Agency:

- a. Senior Engineer Traffic Engineer
- b. Engineer
- c. Associate Engineer

3. San Francisco Public Utilities Commission:

- a. Street Lighting Engineer

4. Recreation and Parks Department:

- a. Project Manager
- b. Planner
- c. Structural Maintenance Yard Staff

III. PROJECT SCHEDULE AND DELIVERABLES

This MOU is based on the Project schedule developed by OCII and CMG with input from Public Works PM (see **Attachment 3: Project Schedule**). Modifications to the Project schedule and durations may require additional Public Work team fees due to additional services required and costs due to fiscal year rate increases in addition to the Project Cost Controls Budget (see **Attachment 4: Project Cost Controls Budget**). The use of any contingency amounts identified in the Project Cost Controls budget to cover added scope and schedule changes will be subject to negotiation and mutual acceptance by OCII and Public Works.

Project Schedule:

(see **Attachment 3: Project Schedule**)

Phase	Milestone	Duration (Months)	Start Date	Completion Date
Design Development		9		
Includes +3-month project restart	50% DD	6	July 2023	December 2023

	100% DD	3	January 2024	March 2024
<i>Simultaneous Agency Review</i>	100% DD	6	March 2024	August 2024
Construction Documents		11		
	50% CD	6	April 2024	September 2024
<i>Simultaneous Agency Review</i>	50% CD	3	October 2024	December 2024
	95% CD, Site and Building Permit Set	5	October 2024	March 2025
<i>Simultaneous Agency Review</i>	95% CD	2	April 2025	May 2025
DBI Permit Review (95% CD)		6	May 2025	October 2025
100% CD		6	May 2025	October 2025
Bid Package Preparation		1	October 2025	November 2025
Advertise/Bid/Award		6-7	December 2025	May/June 2026
<i>Future Construction*</i>		31	July 2026	March 2029
<i>*Construction duration is an estimate and start and final completion dates are subject to change</i>				

City Team deliverables include:

Due Date

- | | |
|---|--|
| • Issue Notice of Intent and provide OCII's design consultant with as-built plans from utility providers. | Prior to 100% DD |
| • Environmental Site Assessment Phase II | Prior to 50% CD |
| • City Agency Review Meetings (including DAC reviews) and Meeting Minutes of the 50% Design Development through 95% Construction Document (as required). | 2 days following each coordination meeting |
| • Cost Estimates and reconciliation of the 100% Design Development and 50% and 95% Construction Documents (including meetings and meeting minutes). | 4 weeks after Submission |
| • Construction Schedule Duration Estimate of the 100% Design Development and 95% Construction Documents (including meetings and meeting minutes). | 4 weeks after Submission |
| • Constructability Review of the 100% Design Development and 95% Construction Document. | 4 weeks after Submission |
| • Recreation and Parks Staff and Planner reviews of the 50% and 100% Design Development and 50% and 95% Construction Documents (including meetings and meeting minutes). | 4 weeks after Submission |
| • Public Works Hydraulic and Civil Engineering staff peer reviews and meetings related to 100% Design Development (including allowance for 50% and 95% Construction Document). | 4 weeks after Submission |
| • PUC Power application submittal (OCII to provide assistance and information required), meetings and meeting minutes. | at 100% Design Development |
| • PUC Water application submittal (OCII to provide assistance and information required), meetings and meeting minutes. | at 50% Construction Documents |
| • DBI preapplication meeting and Site/Building permit application submittal and meetings. | at 100% DD and 95% CD |

- **BSM sidewalk legislation and encroachment permit** reviews, meetings and meeting minutes. 50% -95% CD
- **Coordination with Transbay Infrastructure Task Force on Presentations** to Board of Supervisors , prepare and make presentations to Public Works Commission as well assisting OCII with OCII Commission presentations related to the MOU approval and prior to Award of contract.
- **Finalize Environmental Commitment Record** with OCII and Public Works Regulatory Affairs and SAR. 50% CD
- **Develop strategic outreach plan** with OCII CCD and **CMD** pre-bid. 100% CD
- **Construction Bid Advertisement, Construction Bid and Award of Construction Contract** 100% CD

IV. SCOPE OF SERVICES

Public Works Professional Services include:

1. Project Management

Public Works PM will assist OCII with delivery of the Project. Public Works PM will support, coordinate, and manage all communications between the City Team and OCII. Public Works PM services will be provided from 50% Design Development through 100% Construction Document phases and through bid advertisement and award of contract. Public Works PM services include scheduling and facilitating City agency meetings, managing the City Team and Public Works consultants, and billing OCII for reimbursement of project costs paid by Public Works.

The Public Works PM will additionally provide the following services:

- a. Act as agent to OCII and submit permit applications, schedule reviews and approvals with City Agencies, as outlined below.
- b. Assist OCII with scheduling DBI reviews and act as an agent to OCII to obtain permits from DBI.
- c. Coordinate with the RPD Project Manager to schedule courtesy peer design reviews with RPD's Structural Maintenance Yard under RPD 'best practices' design review scope.
- d. Coordinate and attend PUC power, water and lighting utility provider meetings, provide meeting summaries and pay required fees (that OCII will reimburse).
- e. Enlist a third-party consultant to provide comparative cost estimates and construction duration schedules.

2. Disability Access Compliance Reviews

Public Works ROW DAC and Architectural DAC will develop project American Disability Act ("ADA") parameters and ensure the Project is designed to comply with these parameters:

- a. Attend design reviews with CMG and City Agencies (such as SFFD and MTA) during

- design development (“**DD**”) and construction document (“**CD**”) phases.
- b. Review the 100% DD documents, 95% CD documents and 100% CD submittal for DAC compliance.
- c. Provide final sign-off related to DAC compliance of the building and site permit documents.

3. Hydraulic Engineering Services and Peer Review

Public Works Hydraulic Engineers to perform the following:

- a. Submit Notice of Intent to Construct (“**NOI**”) to all utility companies via DotMaps and organize data to send to CMG’s engineering subconsultant. Public Works Hydraulics to Prepare Final Preliminary Plan (“**FPP**”) memo at 90% CD phase and issue to utility companies via DotMaps. Gather, organize, and forward FPP responses (utility support and work around plans (“**SWAP**”)) to project lead.
- b. Assist in coordination with BSM to place repaved blocks under the 5-year pavement moratorium.
- c. Review the Project 100% DD documents and per allowance for peer review, review the 50% CDs and 95% CDs related to modifications in the Right of Way (“**ROW**”) that may impact hydraulics.
- d. Prepare hydrology review and overland flow study for ROW.

4. Constructability Review

BDC CM to perform a constructability review of the Project’s 100% DD and 95% CD documents.

5. Civil Engineering Peer Review

Public Works Civil Engineers to perform a peer review of the Project’s 100% DD documents and per allowance for peer review, review 50% CD and 95% CD documents related to modifications in the ROW for compliance with Public Works standards.

6. Environmental Engineering

SAR will provide the following services:

- a. Review of ESA Phase II, review specifications and drawings for compliance with soil engineering, mitigation measures, or related site assessment items and confirm compliance with all environmental requirements.
- b. Preparation of the hazardous soils engineering and mitigation report.
- c. Assistance in preparing Division 0 and 1 Specifications (including Hazmat) to accompany bid package.
- d. Coordination with consultant soil engineer in preparation of a Cap Management Plan with subconsultant.
- e. Confirm compliance with City and State archaeological requirements.

7. PUC Engineering and Reviews

- a. Lighting: Street Lighting design and photometrics review and final approvals.

- b. Power: Review power applications and assist with engineering and Pacific Gas & Electric Company (“PG&E”) submittals related to power.

8. MTA Engineering and Reviews

- a. Streetscape design review for Folsom Street signalized crossings.
- b. Review of pedestrian and bike circulation designs.
- c. Provide existing striping plan and reference drawing for proposed striping.
- d. Provide Traffic Routing Specifications.
- e. Provide cost estimate for MTA shop scope of work to be performed during construction (services not included in construction contract)

9. RPD Reviews

- a. Planner ‘best practices’ peer reviews
- b. Operation and Management ‘best practices’ peer reviews

10. Public Works PM and CA coordination with OCII CCD, City Build Local Hiring and San Francisco Office of Labor Standards Enforcement (“OLSE”) to ensure OCII goals and requirements are met in the contract specifications:

Public Works will include City Build’s Local Hiring Requirement Specification 007330, following OCII CCD’s past approvals made for Public Works contract specifications for Phase I: Streetscape Infrastructure (Transbay Block 3 Park and Streetscape Improvement Project) specification. This specification requires that “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 a goal of achieving 50%”*. This document also establishes a goal of no less than 15% of Project work hours within each trade *“with a goal of achieving 50%”* to be performed by **“Disadvantaged Workers”**. OLSE shall include their standard Form 1 Local Hiring Plan, Form 3 Job Notice Form and Form 4 Conditional Waiver.

Public Works will include 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 in place of OCII’s Prevailing Wage Provisions (dated October 2021) following OCII CCD’s past approvals made for Public Works contract specifications for Phase I: Streetscape Infrastructure (Transbay Block 3 Park and Streetscape Improvement Project) specification).

11. Contract Monitoring Division/Small Business Enterprise (“SBE”) Program

Public Works PM will coordinate with CMD and OCII CCD to ensure that applicable City contracting policies meet the goals of OCII’s SBE policy (See **Attachment 5**).

Public Works PM will coordinate with CMD and OCII CCD to ensure compliance with OCII’s SBE policy for the bid, advertisement and award of the construction contract.

- a. Public Works PM to coordinate outreach to potential bidders (See **Attachment 6**).
- b. Public Works CA to prepare bid advertisement and pre-bid meeting and coordinate responses.
- c. Public Works CA to formally issue bid addendum as required.

- d. CMD will serve as the lead contract compliance agency but work in conjunction with OCII's CCD staff.

The construction bid documents shall include language in the specifications that for all City awarded contractors brought onto the Project during its construction phase, Public Works PM and CMD will work towards assisting OCII in meeting its 50% goal for SBE participation by:

- a. *To the greatest extent possible, approving SBE contract service orders or work orders, and*
- b. *Providing OCII CCD with quarterly SBE participation status reports. Public Works will give first consideration in the approval of contract service orders or work orders in the following order:*
 - i. *Redevelopment project area SBEs (those located in an OCII Redevelopment Project Areas [zip code areas 94105, 94158, 94124, and 94188])*
 - ii. *San Francisco-based SBEs, and*
 - iii. *All other SBEs.*
 - iv. *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 contract document specifications require that 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 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. The contract document specifications will include language that 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 6: Bid Outreach Strategies**).

12. Regulatory Affairs

Regulatory Affairs will assist OCII, as Lead Agency, with review of state, federal and local requirements. Additionally Regulatory affairs will assist with finalizing OCII's Mitigation Measure Requirement Plan ("**MMRP**") applicable to the Project Area environmental compliance required for future construction of URP.

13. Consultant Services

Public Works professional services also include coordinating City as needed consultant services including a cost estimator, scheduler, and soil engineer.

V. ROLES AND RESPONSIBILITIES

OCII's primary role as Project sponsor is to obtain Project land use approvals, fund the construction of the Project and manage the design consultant services. OCII's role also includes coordination and

communication with TJPA, Caltrans, and the ECCBD staff for design reviews and approvals.

To ensure consistency with Transbay Redevelopment Plan and Plan documents and OCII's adjacent developments, any significant Project design or program modifications are subject to OCII's review and approval.

A summary of the City Team's roles and responsibilities is as follows:

1. **Design Review and Comments:** Public Works will route Project design packages through City departments for review, input and guidance. Public Works will coordinate feedback, resolve conflicts and prepare regular status reports for OCII.

OCII will provide the below Project design packages, as prepared by CMG, for review by the City Team and City Agencies, and for cost estimating and scheduling as specified above in **Section IV Scope of Services** and the below chart, "**Reviews by City Team**":

- a. 100% DD Package: 100% DD Drawings, Specification Outline, and Cost Estimate.
- b. 50% CD Package: 50% CD Drawings, Specification Outline, and Cost Estimate.
- c. 95% CD Package: 95% CD, Specifications, and Cost Estimate.
- d. 100% CD Package: 100% CD, Specifications, and Cost Estimate.

Reviews by City Team					
Department	100% DD	50% CD	95% CD	100% CD	Site visits/ Meetings
Public Works ROW DAC	X	X	X	X	5
Public Works –Architectural DAC	X	X	X	X	5
MTA	X	X	X		3
PUC	X		X		4
Public Works BDC CM (Constructability review)	X		X		1
Public Works IDC – Civil Engineering	X	X	X		
Public Works IDC – Hydraulic Engineering	X	X	X		
RPD Structural Maintenance Yard	X	X			1

2. **Project Meetings:** The City Team listed in the above chart will meet with OCII PMs and CMG after each phase where the City Team provides design as noted in above chart.
3. **Project City Permitting Approvals::** The lead agency for each permit or approval is noted below. OCII will be responsible for reimbursing Public Works for payment of all permit application and issuance fees.

- a. MTA Livable Streets staff to present Project design drawings to the Committee for Utility Liaison on Construction and Other Projects (“**CULCOP**”), Interdepartmental Staff Committee on Traffic and Transportation for temporary street closures (“**ISCOTT**”), and Transportation Advisory Staff Committee (TASC), where required.
- b. Public Works PM to prepare the application for sidewalk legislation for Public Works BSM review and approval. OCII to provide required Project documents or drawings for reviews.
- c. Public Works to schedule reviews and coordination meetings with City Agencies including MTA, PUC, RPD and DBI. Public Works will be responsible for preparing presentations, agendas, conducting meetings, and preparing meeting minutes.
- d. Public Works PM to coordinate with MTA Livable Streets and MTA parking to assist project with street and parking legislation and attend TASC meetings as required. Public Works PM to prepare meeting minutes.
- e. Public Works PM to organize meetings and reviews with BSM, Bureau of Urban Forestry (“**BUF**”) and Public Works Maintenance and Operations to assist in securing approval for non-standard pavements and replacements. OCII to provide required Project documents or drawings for reviews. Public Works PM to prepare meeting minutes.
- f. The City’s Infrastructure Task Force to submit final sidewalk legislation to the Board of Supervisors for Approval. OCII to provide required Project documents or drawings for review.
- g. Public Works PM to coordinate with MTA Livable Streets to assist with any needed design approvals related to signal changes, bicycle lane changes and/or raised crosswalks. OCII to provide required Project documents or drawings for review. Public Works PM to prepare meeting minutes.
- h. Public Works PM to prepare applications for Major and Minor Encroachment Permits, as required by BSM. OCII to provide required Project documents or drawings for review.
- i. Public Works SAR to submit Maher Ordinance Application to DPH. Public Works PM and Public Works SAR to coordinate with OCII concerning DPH Cap Management Plan requirements and documents. City Soil Engineer to submit proposed soil borings plan and testing for ESA Phase II (note: ESA Phase I was completed in 2019) and submit a draft of the Cap Management Plan to DPH for review and approval. Soil Engineer to submit final ESA Phase II and Final Cap Management Plan to DPH for review and approval. OCII to provide required Project documents or drawings for review.
- j. Public Works PM to assist in review of Project documents related to compliance with additional City requirements such as Environmental Code, Green Ordinance and Better Streets Plan. OCII to provide required project documents or drawings. OCII is responsible for ensuring final Project design documents meet all City, State and Federal requirements.
- k. OCII, as the land use authority, will coordinate with the Planning Department, if necessary, to obtain a General Plan Referral for the Project.
- l. Public Works PM will set up meetings with PUC Street and Pedestrian Lighting Division for its engineers to review Project’s photometric plans, and Public Works PM will submit the final Project photometric plan for PUC review and approval.
- m. Public Works PM to coordinate with OCII and CMG to provide any information required by PUC for power applications.
- n. Public Works PM will assist with any required applications for Street Improvement Permits. OCII to provide required Project documents or drawings.
- o. Public Works PM to act as agent to OCII and the TJPA (as the owner of the Project) and submit the building permit application. Public Works PM and OCII PM will attend meetings with DBI. Public Works PM to prepare meeting minutes.

- p. OCII, as the Project Sponsor, is primarily responsible for coordination and scheduling with TJPA and Caltrans, the Project's underlying property owners. OCII to provide required Project documents or drawings.
- q. Public Works PM to assist OCII in obtaining any required Caltrans permits (such as encroachment permit), if requested by OCII. OCII to provide required project documents or drawings.

4. Public Works SAR:

- a. Conduct Article 20 analysis of soil for hazardous waste and hazardous material soils engineering.
- b. Public Works SAR to review ESA Phase II to ensure the project meets Article 20 analysis of soil for hazardous waste, and hazardous material soils engineering.
- c. Public Works consultant Soil Engineer to prepare hazardous soils engineering and mitigation report.
- d. Public Works SAR to provide support for environmental and engineering services and preparation of specifications (using Public Works standard specifications).
- e. OCII to review the Environmental Impact Report ("**EIR**") for any Project-related Mitigation Monitoring Reporting Plan ("**MMRP**") requirements and provide Public Works SAR with Environmental Commitments. Public Works SAR and Regulatory Affairs ("**RA**") to review Environmental Commitments, confirm compliance, track and complete reporting with required MMRP, if requested by OCII.
- f. Public Works SAR to review specifications and drawings in all interim submittals for compliance with soil engineering, mitigation measures, or related site assessment items as required by the Environmental Engineer.
- g. Public Works SAR to review 100% CD package, specifications and cost estimates for compliance with soil engineering, mitigation measures, or related site assessment items as required by the Environmental Engineer.
- h. Public Works PM to coordinate with SAR, RA and CA in the preparation and Division 0 and 1 Specifications (including Hazmat) specifications to accompany bid package, in coordination with OCII's design consultant.
- i. Public Works PM, SAR, and consultant Soil Engineer to coordinate in preparation of Cap Management Plan with subconsultant, in coordination with CMG (if required by Department of Public Health).
- j. Public Works PM and RA to coordinate with OCII to confirm Caltrans environmental requirements (including any National Environmental Policy Act ("**NEPA**")/California Environmental Quality Act ("**CEQA**") review triggered by work under the Fremont off-ramp).
- k. OCII to coordinate with the Planning Department to prepare a Preliminary Archeological Report ("**PAR**"). If OCII deems separate archeology services are required, Public Works to contract with consultant archeologist to work with OCII and the Planning Department to confirm compliance with OCII and State archaeological requirements. OCII will alert CMG of modifications to construction drawings and specifications, if needed. OCII staff will continue to be the primary point of contact with the Planning Department on any required archaeological services.
- l. Public Works RA team and Public Works PM to enter project into Public Works Regulatory Management System ("**RAMS**") database.

5. MTA

- a. Streetscape Design:

- i. Folsom/Essex Signal: MTA Signal Engineers to provide conceptual Folsom/Essex Street signage plans, instructions on implementation of signs, traffic routing plans, specifications & cost estimates (lane requirements, Muni, detours, final striping, etc.).
 - ii. Howard Street Signal: to be designed under a separate Howard Streetscape Improvements Project and is not included in the scope of this project other than for coordination. However, OCII, at its discretion, will sponsor Howard Street signal improvements (power, poles, lights, and signal buttons) at the crosswalk directly adjacent to the Project site as intended to connect the park circulation and publicly accessible TJPA properties flanking Howard Street.
 - b. MTA Transportation planning reviews:
 - i. MTA to review plans and establish required parking meters and utility requirements at Clementina Street;
 - ii. MTA to review traffic, security, safety design details concerning bike and pedestrian pathways, street crossings, turn lanes and path layout within the ROW and peer review of the park bike lane design;
 - iii. MTA to review striping plans at crossings;
 - iv. MTA to review any traffic engineering studies or modeling;
 - v. MTA to review any on-street parking/loading zones and curb paint revisions along Clementina and Tehama Streets;
 - vi. Public Works PM to assist with MTA applications, hearings, and meetings with affected parties, where required;
 - vii. Public Works and MTA to coordinate to determine potential re-use of existing conduits, pole foundations, spacing for new streetlights for joint utility and City owned poles;
 - viii. MTA to review designs for temporary items required during construction e.g., traffic management plans, temporary push-button poles, etc.
6. **Utility Coordination and Review:** Public Works to assist in procuring the necessary approvals from PUC and will lead the coordination effort with all other utility providers as outlined below:
- a. **PUC Review:** The San Francisco Public Utilities Commission (PUC) will be responsible for reviewing all design package submittals and assisting with replacement of PUC-owned utilities.
 - i. Public Works PM to set up meetings with PUC to review Project's lighting plan drawings and details, related specifications, and photometrics of proposed lighting within the public right-of-way.
 - ii. Public Works PM to coordinate Street Lighting Design review with PUC to confirm the street light products/spacing meet PUC standards. Public Works PM to prepare meeting minutes.
 - b. **PUC and PGE Utilities:** Public Works **PM** will lead coordination with PUC (sewer, water and power) and PG&E (gas and electric) utility companies throughout the Project. Public Works will also assist OCII with coordinating meetings related to existing utilities in the ROW and potential variances of utility clearances where required.
 - i. Public Works PM, as the coordinator, assists in communication between the designer of record and the utilities;
 - ii. OCII shall provide documents by the CMG or their subconsultant necessary for the NOI as well as transmittals, including final preliminary, to the utilities;
 - iii. Public Works submits the NOI to the utilities and collects and transfers information to/from OCII's design consultant;

- iv. OCII shall provide documents from the Project's design consultants. CMG retains responsibility for preparing design documents related to new and existing utilities and production of any drawings needed for coordination purposes;
 - v. OCII shall provide utility composites prepared by CMG or their subconsultant. OCII shall identify all conflicts between existing utilities and their design that might require utility relocations. The Project design should account for all known existing conditions including utilities;
 - vi. OCII shall provide technical design information and drawings as prepared from the Project's design consultants as needed for utility coordination between Public Works and utility providers;
 - vii. Public Works shall advise OCII and their design consultants in the resolution of any conflicts with utilities that may arise.
7. **Recreation and Parks Department 'Best Practices' Review** through 100% CD, to be facilitated by RPD Project Manager, at:
- a. 100% Design Development ('Best practices' design review of plans and specifications for maintenance/operations considerations)
 - b. 50% Construction Documents ('Best practices' design review of plans and specifications for maintenance/operations considerations)
 - c. RPD to provide up to eight hours in advisory services, if requested, post-50% Construction Documents.
8. **Construction Bid Advertisement, Award. Public Works** PM to coordinate with Public Works CA and CMD for the Construction Bid Advertisement and Award:
- a. Public Works PM to coordinate outreach to potential bidders.
 - b. Public Works CA to prepare advertisement and pre-bid meeting.
 - c. Public Works PM and CMD to attend pre-bid meetings
 - d. Public Works PM and OCII PM to respond to questions from bidders with assistance from CMG during advertisement and Public Works CA to disseminate responses to contractors.
 - e. OCII to ensure their design consultant prepares necessary addendum to the construction documents as required and Public Works CA to formally issue addendum as required.
 - f. Public Works PM to review with OCII PM the receipt of those bids reviewed and approved by CA for recommendation for award of contract.
9. **Additional Services.**
- a. **Cost Estimate and Scheduling.** Public Works to enlist a third-party consultant to provide a Comparative Cost Estimate and Construction Duration Schedule at:
 - i. 100% Design Development
 - ii. 50% Construction Documents (cost estimating only)
 - iii. 95% Construction Documents
 - b. **Utility Potholing.** Public Works to include an allowance for consultant utility potholing services, as needed. OCII, through CMG, will confirm potholing information requests by providing an excel spreadsheet for each pothole with corresponding map indicating exact locations. Pothole requests should be provided to Public Works with 9-12 months' notice given Public Works Job Order Contracts for pothole requests are currently taking a minimum of 6 months to secure.

10. OCII and CMG Construction Review and Approvals:

- a. OCII will ensure CMG provides signed Construction Documents by CMG or the Project's Engineer of Record.

VI. PROJECT COST CONTROLS BUDGET

1. **Project Cost Controls Budget.** Project costs for the City Team's collective services are based on Public Works and OCII's agreement regarding the Project scope, schedule, and budget. The Project costs are listed in the "**Project Cost Controls Budget**" (**Attachment 4** hereto), and OCII will fund all City agency services performed under this Agreement on a reimbursable basis to Public Works. The Project Cost Controls Budget is a total not-to-exceed cost of **Three Million, Four Hundred and Sixty-Nine, Two Hundred and Seventy-One Dollars (\$3,469,271.00)**. OCII agrees to retroactive payment of Public Works-funded services for the Project rendered between November 2023 and date of the approval of this MOU ("**OCII-Authorized Pre-MOU Project Services**"). These OCII-Authorized Pre-MOU Project Services are included in the total Project Cost Control Budget.
2. **Fiscal Year Increases.** Public Works, PUC, RPD and MTA cost proposals include fiscal year increases, typically at a rate of 4% annually, 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 consideration.
3. **Scope Changes.** Public Works PM shall consult OCII PM in advance of authorizing any City Team requests or requirements for additional scopes of work in response to Project changes. Upon receipt of any such request from Public Works regarding additional City Team scope of services, OCII shall review the submittal and as set forth in services listed below, either provide written authorization for the additional scope of services and determine whether the change in scope requires OCII Commission approval or deny the request and set forth the reason(s) for the denial. Public Works and OCII agree and understand that during the term of this Agreement any budget revisions will require prior written approval by OCII's Executive Director or its designated assignee.
4. **Use of Fee Contingencies.** The purpose of the fee contingencies is to cover services provided by City agencies, consultants or specific Project scopes of work necessary to complete the Project from design development through award phase 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 City consultants 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 services to complete Project tasks within the scope of this Agreement. However, the Public Works PM will inform the OCII PM of the 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.
5. **Fee Schedule.** The fee schedule for Public Works services is based on the Parties understanding of the 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 MOU. OCII shall review and approve such requests as expeditiously as possible. Both parties agree and understand that during the term of this Agreement any budget revisions, including use and/or reallocation of project contingencies, will require notification of the changes to OCII.

6. **Printing Costs Reimbursement.** OCII will reimburse Public Works for any printing or mailing costs required for the Project. A budget line for such printing or mailing costs is included in the Project Cost Controls Budget.
7. **Allowances.** Allowances for potentially necessary fees and services are included in the total Project Controls Budget (see **Attachment 4: Project Control Costs Budget**) and cover the following services or activities: Archeologist, Planning Department reviews related to archeology, additional services related to the MMRP, and additional City agency fees or permits. Allowances are included for approximate DBI permit fees, PUC and PG&E fees, and any additional investigations required such as soil analysis, borings or flow tests not covered by this Agreement.

PROFESSIONAL FEES

Estimated Project Fees for Public Works, MTA, RPD, PUC, and DPH services are summarized below, and are based on Public Works understanding of the Project scope, schedule and budget at the time of this Agreement.

City Agency	Description	Amount
Public Works	Project Management, hydraulic engineering, civil and hydraulic peer review, site assessment remediation engineering, Disability Access Coordinator reviews, Construction Management constructability reviews, Contract Administration & Prep & Other Services	\$ 1,290,545
MTA	Signal and Traffic Routing Design & Livable Streets Review Fees	\$ 69,568
PUC	Reviews by PUC Pedestrian and Street Lighting and PUC Stormwater Control Management	\$ 28,700
RPD	Advisory Review Fees by RPD Planning and Maintenance and Operations staff	\$ 13,756
DPH	Maher Ordinance application fees and Cap Management Plan reviews	\$ 12,000
	Total:	\$ 1,414,569

City consultants' fees including cost estimating, scheduling and soil engineering consultants amount to \$397,188.

Allowances amounting to \$1,205,000 are budgeted for the below services:

- a. Permits/Fees: DBI Building and BSM tree removal and tree planting, street improvement and encroachment permits
- b. PUC Power Enterprise and PGE fees
- c. City Attorney
- d. PW Regulatory Affairs
- e. Public Outreach Consultant
- f. Planning Department
- g. Reproduction and Printing costs

Project Reserve includes a 15% contingency amounting to \$ 452,514.

Total Project Control Costs (which include professional fees and allowances for City consultants, permits and site investigations) are not to exceed **Three Million, Four Hundred and Sixty-Nine, Two Hundred and Seventy-One Dollars (\$3,469,271)**. See below summary of **Attachment 4**.

Summary of Project Controls Cost Budget:

City Agency	Public Works	1,290,545
	MTA	69,568
	PUC	28,700
	RPD	13,756
	DPH	12,000
Subtotal City Agency		\$1,414,569
City Consultants	Cost Estimator	200,377
	Scheduler	56,635
	Soil Engineering	140,176
Subtotal City Consultants		\$397,188
Allowances	Permits/Fees	475,000
	PUC Power & PGE fees	500,000
	City Attorney	20,000

	PW Regulatory Affairs	45,000
	PW BSM	20,000
	Public Outreach	50,000
	SF Planning	30,000
	Repro/Print/News adds	25,000
	Archeologist	40,000
Subtotal Allowances		\$1,205,000
TOTAL (without contingency)		3,016,757
	15% Contingency	452,514
GRAND TOTAL (with contingency)		\$3,469,271

VII. ASSUMPTIONS

OCII is responsible for all public outreach and coordination with TJPA, Caltrans, and ECCBD including scheduling design reviews for approval by TJPA, Caltrans and ECCBD. OCII is also responsible for preparing presentations, meeting agendas, conducting meetings and preparing meeting minutes, except where this Agreement assigns such tasks to Public Works.

OCII shall be responsible for payment of application fees and securing Project approvals and Project Planning and Environmental Reviews, including but not limited to the following:

1. All San Francisco Planning Department reviews and assignments, including, but not limited to, a General Plan Referral application review and a Preliminary Archeological Report;
2. As Lead Agency, OCII shall perform any environmental review as required under CEQA, or under NEPA, and shall be responsible for payment of environmental review costs;
3. TJPA and Caltrans reviews, approvals, and requirements, including, but not limited to, legal fees.

OCII shall be responsible for securing any required subsequent Project design approvals from its Commission, TJPA Board, and approvals by the ECCBD, as the Project's expected operator.

OCII has hired CMG as its Project design consultant. CMG and its subconsultants, as architects and engineer of record are responsible for:

1. Site and Building Design and design within the public ROW
2. Topographic and civil surveys
3. Geotechnical Borings and Reports including percolation tests if required for the Stormwater Management Control Plan.
4. Existing building plans prepared by other members of the design team showing structures,

utilities, and subgrade construction on site will be provided, if there are anticipated encroachments into public ROW

5. Utility Composite Plans
6. Summary of Work and Limit of Work Plan for NOI
7. Preparing documents for approvals by all required City and State agencies and permitting including but not limited to permit reviews by DBI, PUC Stormwater Control Plan, DPH Cap Management Plan, and BSM Encroachment permits.
8. Preparing application documentation and drawing submittals required for applications including but not limited to PUC Water and Power application.
9. Providing drawings for presentation by OCII and Public Works to Board of Supervisors, OCII and Public Works Commissions as well as for public outreach.

Consistent with the provisions of this Agreement (including without limitation Paragraph I-V above), Public Works will provide project management and professional services for the Project.

Public Works Project Management Analyst to assist with funding allocations, funding transfers between City departments, budget forecasting, invoicing, payments and monitor expenditures with assistance from Public Works accounting.

Public Works DAC will provide federal ADA compliance review of URP's construction documents to ensure the installations meet federal, state and local requirements

Public Works PM will provide reasonable services required to assist OCII and their consultants in coordination of this Project's streetscape design improvements and signalized crossings with other projects' street improvement designs immediately adjacent to the Project.

It is anticipated that the Public Works PM will attend the monthly City Infrastructure Task Force meetings as requested by OCII.

VIII. EXCLUSIONS AND ADDITIONAL SERVICES

The services and/or tasks listed below are not included in Public Works's scope of work. OCII may request Public Works to include such services and/or tasks as an Additional Service by modification to this Agreement.

1. Public Works services beyond recommendation for award of construction contract including all Public Works staff and professional services during construction administration, management and oversight (note: Public Works services under this Agreement conclude with recommendation for award of construction contract under Paragraph IV.D, above);
2. Additional services due to changes in scope;
3. New deliverables beyond those listed in this Agreement and its attachments;
4. Revisions requested by OCII to work previously approved requiring additional City agency reviews and approval;
5. Services required for re-advertisement of the contract for construction;
6. Application and payment of fees to utility providers other than PUC and PG&E for new and/or modified services;
7. Services required for LEED or SITES certification and commissioning for green building requirements;

8. Services made necessary by reversals of authorizations, approvals or instructions previously given by OCII staff, OCII Commission, RPD, RPD Commission, Public Works Commission, other City authorities or regulatory agencies, TJPA, and Caltrans;
9. Planning Department General Plan Referral;
10. Notice of Exemption (“**NOE**”) from CEQA; Environmental review and clearance; other planning or environmental review as required for the Project;
11. Sea Level Rise Study and Report (not required as confirmed by Public Works Hydraulics Nov 2017);
12. Geotechnical reports;
13. Drainage, sanitary sewerage design or ROW drainage;
14. Public Outreach, Community Meetings and Public Presentations;
15. Project Definition and Project Program: preparation of program and planning documents such as Community Needs Assessment, OCII Plan of Service, OCII Building Program, or Project Program Statement;
16. Surveys, indicating site boundaries, utilities, location of structures, topographic information and services associated with surveying;
17. Value engineering related services and cost estimating;
18. Site or Building Design; Civil engineering; graphic and signage design; acoustical engineering; interior design; telecommunications; computer & security systems design; traffic surveys and engineering; engineering design of shoring, bracing and underpinning systems;
19. Public Works isn’t responsible for budget/fee changes made by MTA or PUC in the event that OCII increases the Project’s scope;
20. Services made necessary by changes in codes, regulations or interpretations during the term of this Agreement;
21. Services made necessary by conflicts between approvals and/or requirements by City agencies;
22. Coordination, management of and/or presentations related to Art Commission required Visual Arts Art Component and Formal Civic Design Review are not included in this contract as per OCII, OCII projects are understood to be exempt;
23. 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;
24. OCII to coordinate with TJPA and ECCBD related to 3rd Party utilities for telephone, data, and television.

IX. FINANCIAL OVERSIGHT, INVOICE PAYMENTS AND AUDITS

Public Works and the OCII agree to the accounting methods and procedures per this MOU which is intended to serve as a guideline for accounting activities and communication by and between OCII and Public Works.

1. **Spending Authority.** OCII has the contractual authority to develop the Project under the Transbay Redevelopment Project Implementation Agreement (January 20, 2005), and the expenditure authority under the approved Recognized Obligation Payment Schedule (“**ROPS**”) Line 391 providing funding for the Project, subject to reauthorization by DOF annually. OCII funding to fund this Agreement includes OCII-issued bond proceeds, Transbay Park Fees and other sources. Public Works, PUC, RPD and MTA 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 advertising the bid for construction contract for a qualified general contractor, OCII will demonstrate in the form of an approved resolution issued by the Successor Agency Commission (or other form reasonably acceptable to Public Works) the full amount of construction funding (both hard and soft construction funding shall include 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 during construction), and the associated hard and soft cost contingency. Public Works will set up initial funding to allow for advertisement of bids. OCII will reimburse Public Works in full for encumbrances for the period between design development, advertisement, and bid award. Should OCII elect for Public Works to provide construction management of the Project, Public Works and OCII will need to execute a future amendment to this Agreement or a separate MOU to approve the terms and costs of work covering the Project phases between bid award through construction completion.
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, and if OCII desires that Public Works advertise the construction bid opportunity to general contractors, it will provide Public Works with evidence of the funding sources for the Project's eventual 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. **Coordinating Agency.** Public Works will act as the City's lead agency to facilitate coordinated review of Project Reimbursement Applications from MTA, PUC and other City Agencies. RPD, MTA, DPH, and PUC will submit its billing to Public Works to be included in Public Works' quarterly to OCII.
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 Team departments. Public Works will submit payments to other City Team 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 Project are capital in nature. All expenses for the 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 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 the 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 the Department Procedure 2.1.5.

X. INDEMNIFICATION AND INSURANCE

1. **Indemnification by City's Contractors.** The Parties understand that City, as agent for OCII under the MOU, may enter into contracts with third parties to perform pre-construction services on the Project in accordance with the MOU. Under the San Francisco Administrative Code, the City must require that all City contractors fully indemnify the City to the maximum extent provided by law, including but not limited to California Civil Code Section 2782.8, such that each contractor must save, keep, bear harmless and fully indemnify the City and any of its officers or agents from any and all liability, damages, claims, judgments or demands for damages, costs or expenses in law or equity that may at any time arise. This indemnification requirement cannot be waived or abrogated in any way without the express approval of the Board of Supervisors. In all City contracts with third parties where the third-party will perform services for the Project in accordance with this MOU, the City shall further require that the third-party fully indemnify and hold harmless OCII, TJPA, and Caltrans in the same manner and to the same extent as they indemnify City.
2. **General Indemnification.** City shall defend, indemnify, and hold harmless OCII, TJPA, Caltrans, their boards and commissions, and all of their officers, agents, members, employees, or any other person deemed necessary by any of them ("Indemnities") from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of the performance of the services under this MOU to the same extent as the City is indemnified by its contractors as provided in Section X(1) above.
3. **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 Attachment 1 (Property Map/Permit Area), 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.
4. **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, TJPA, and Caltrans, 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 the MOU Scope of Services.
 - 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 Scope of Services, 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 Scope of Services 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 Scope of Services for the benefit of City, OCII, TJPA and Caltrans. 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 Scope of Services.

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:

- i. If the MOU Scope of Services 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.
- ii. OCII, TJPA and Caltrans have 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 Scope of Services, 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.
- iii. All soils test data, and reports prepared or based thereon, obtained from these activities ("Testing Information") shall be provided to the OCII, TJPA and/or Caltrans upon request and OCII, TJPA and/or Caltrans may use said Testing Information for whatever purposes

they deems appropriate, provided that OCII, TJPA and Caltrans, respectively, assume all risk of use of the Testing Information for purposes other than the MOU Scope of Services and the intended purpose of the reports, i.e., the construction of the Project. OCII acknowledges that City is not providing any advice to OCII, TJPA, or Caltrans, whether legal or otherwise, by providing the Testing Information unless OCII is using the Testing Information for purposes related to the MOU Scope of Services .

- iv. 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.

5. 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 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 Transbay Joint Powers Authority (TJPA), Caltrans, and 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 TJPA, Caltrans, or 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 to Public Works by OCII, provided OCII may elect to reduce or otherwise alter insurance requirements as needed to contain costs. Increases in Project costs resulting from Public Works' contractors' compliance with TJPA, Caltrans, or 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 TJPA, Caltrans, or 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.

XI. 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 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 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.

XII. ENTIRE AGREEMENT

This Agreement including the Attachments 1 - 6 represent 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 for their respective legal counsels to 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.

XIII. 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.

XIV. SEVERABILITY

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

XV. RIGHT OF ACCESS/PERMIT TO ENTER

OCII shall coordinate all permits to enter or other access to the Project site directly with TJPA and/or Caltrans, which will describe the terms and conditions of entry and access to the Project site.

XVI. LIABILITY OF PARTIES

Notwithstanding any other provision of this Agreement, in no event shall either party (or the TJPA or Caltrans) 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.

XVII. 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.

XVIII. ATTACHMENTS

Attachment 1: Property Map/Permit Area

Attachment 2: OCII Commission approval of the Schematic Design (Memorandum 122-0032023-002)

Attachment 3: Project Schedule

Attachment 4: Project Control Costs Budget

Attachment 5: OCII-SBE Policy amended March 2023

Attachment 6: Bid Outreach Strategies (by OCII CCD & Public Works PM & CMD)

Attachment 7: MMRP-Environmental Commitment Record