



MEMORANDUM

May 5, 2023

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Ed Harrington
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director

SUBJECT: Request Approval of a Resolution Consenting to an Interagency Cooperation Agreement with Transbay Joint Powers Authority Regarding Port staff's Work Program and Reimbursement of Port's Costs Related to Phase 2 of the Transbay Program.

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 23-23

This item was presented as an informational item at the April 25, 2023 Port Commission meeting and is now before the Port Commission for approval. For convenience, any substantive changes from the informational staff memorandum are shown in underline and strikeout.

EXECUTIVE SUMMARY

The purpose of the memorandum is to provide the Port Commission and the public with information regarding a major regional transportation project in the City known as the Transbay Program, which is led by the Transbay Joint Powers Authority (**TJPA**). The TJPA is a joint exercise of powers authority created by the City and County of San Francisco, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, the California High Speed Rail Authority, and Caltrans (ex officio). The TJPA is managed by TJPA staff and is overseen by an eight-member Board of Directors. The Port is one of several City departments that have been asked to participate in the project.

As the TJPA prepares to embark on Phase 2 of the project, which will build off the work done during Phase 1 of the project in which the Port also participated,¹ the City is requesting that the Port Commission, along with all other participating City departments, consent to an interagency cooperation agreement (**ICA**) in advance of performing any work associated with the project. The ICA is a cooperating and reimbursement agreement between the participating City departments and the TJPA which will be administered by the Department of Public Works (PW). As outlined in the ICA, subsequent department actions and/or approvals will be required as the TJPA carries out the Project. For the Port, the anticipated future agreement(s) involve the approval of a trust exchange or another path to allow use of property subject to the public trust restrictions under the Burton Act located on Townsend Street which lie along the route of the planned downtown rail extension corridor, in collaboration with the State Lands Commission.

The general form of the consent to the ICA as well as the form of the Annual Scope and Budget are provided as exhibits to this report for reference.

BACKGROUND

The Transbay Joint Powers Authority (TJPA) is delivering the Transbay Program, a visionary transportation and housing project that has transformed downtown San Francisco and the San Francisco Bay Area's regional transportation system by creating a world class transportation hub in the heart of a new neighborhood. TJPA has completed Phase 1 of the Transbay Program, construction of the Salesforce Transit Center. The City consulted and cooperated with TJPA in aspects of the planning, design, construction, and financing of Phase 1, including execution of many intergovernmental agreements and memoranda of understanding between various City departments and TJPA.

TJPA is actively engaged in delivery of Phase 2 of the Transbay Program, the Downtown Rail Extension (the Project). The Project will connect Caltrain's regional rail system and the California High-Speed Rail Authority's statewide system to the Salesforce Transit Center in downtown San Francisco. The rail alignment will be constructed principally below grade to provide a critical link for Peninsula commuters and travelers on the state's future high-speed rail system.

Under California Public Resources Code section 5027.1, TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program. Nonetheless, the design, construction, and operation of the Project will affect property, improvements, programs, and services of the City and, thus, TJPA requires certain permissions and approvals from the City as the entity that owns and/or has the right to control such items. Moreover, as in Phase 1, TJPA would benefit from the consultation, cooperation, expertise, and experience of the City in certain matters related to the planning, design, and construction of the Project.

¹ In 2020, the Port Commission adopted Resolution 20-01 approving a trust exchange between the Port, City, and the State Lands Commission for Transbay area and Fisherman's Wharf streets, to facilitate a consolidated Transbay Transit Center site and to implement an improvement plan.

The Project will bring direct and indirect benefits to City residents by providing improved regional and statewide rail connections to downtown San Francisco. Easier and more efficient transit options for commuters, tourists, and business travelers will support downtown San Francisco businesses and contribute to the economic revitalization of San Francisco at large and the neighborhoods surrounding the Project in particular. Connecting San Francisco to high-speed rail, which is expected to reduce reliance on intrastate air travel, will contribute to the decarbonization of California's economy.

The Project will be advanced over the course of several years, and TJPA and the City expect the scope of services and work provided pursuant to an Interagency Cooperation Agreement (ICA or Agreement) to change and adjust over time. TJPA and the City intend for the Agreement to provide a flexible mechanism that will accommodate the evolving services and work that will be undertaken by the City for the Project as the Project advances.

DESCRIPTION OF AGREEMENT

The ICA provides for City's consultation and cooperation with TJPA to facilitate the planning, design, and construction of the Project. The City and the TJPA commit to act cooperatively and in good faith to fulfill their respective roles in the ICA, and to expeditiously advance and implement the Project. The concept of the ICA is to include all involved City departments in one watershed document that will govern the City's process and work on Project matters. Instead of a series of individual agreements with each City agency for Phase 2 of the Transbay Program, the ICA is designed to provide a flexible mechanism that will accommodate the evolving "City Tasks" each department will undertake for the Project as the Project advances and is structured to:

- (1) provide a consistent set of general terms to govern the City Tasks, which terms are set forth in the body of the Agreement;
- (2) provide a mechanism for annual budgeting and agreement on scope of City Tasks undertaken by City Agencies each year;
- (3) provide a mechanism for reimbursement of Eligible Costs in connection with the City Tasks; and
- (4) provide clarity and flexibility regarding the approval process for amendments to the Agreement, and amendments to and replacements of the Annual Scopes and Budgets.

Each City department will enter into its own "Annual Scope and Budget, or ASB" (similar to a Work Order) each fiscal year that will be an appendix to the ICA and will detail:

- (1) the anticipated scope of City Tasks the department will undertake that fiscal year,
- (2) a budget for those City Tasks, and
- (3) any other terms that are unique to that department, the City Tasks to be

undertaken, or that will supersede the terms of the ICA body.

It's expected that the Port will be among the departments that will execute the ICA, and the Board of Supervisors will be required to approve the ICA pursuant to Charter Section 9.118.

The primary components of the Agreement are summarized as:

- (1) City Property and City Improvements. Installation and construction of the Project improvements will require removal or relocation (temporarily or permanently), protection in place, or restoration of certain Impacted City Improvements in City right-of-way. The Agreement addresses the Project's anticipated temporary occupancy of City right-of-way and City Property depicted in Exhibit 1 attached to this staff report (Project map), the anticipated documentation and necessary actions and approvals for the City's anticipated street vacation and conveyance of subsurface easements to TJPA (Appendix A, attached to this staff report), the identification of Impacted City Improvements, and the planning, design, relocation and construction of Modified City Improvements.
- (2) City Consultation and Cooperation. City Tasks will include the City's consultation and cooperation as part of TJPA's Project planning, design, and construction, for the TJPA Improvements and the overall Project, as will be described in detail in the Annual Scopes and Budgets.
- (3) Costs and Reimbursements. TJPA will reimburse each City department's Eligible Costs in connection with the Agreement, as described in Section 8 of the Agreement.

The term of the Agreement will be ten years unless earlier terminated or the Parties agree to extend the term, subject to approval by the Board of Supervisors.

ENVIRONMENTAL REVIEW

Under the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA"), a final Environmental Impact Statement/Environmental Impact Report for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project ("EIS/EIR") was prepared and certified in 2004. The FTA issued a Record of Decision ("ROD") under NEPA for the Project in 2005. After the issuance of the 2005 ROD, TJPA identified modifications to the Transbay Program; from 2006 to 2011, TJPA prepared six addenda under CEQA. In 2010, the Federal Railroad Administration ("FRA") conducted an environmental reevaluation in accordance with NEPA to assess the train box design to accommodate potential high speed rail service. The reevaluation analyzed construction of the Transit Center train box as defined by the Transbay Program. The FRA issued a ROD in 2010. In 2018, FTA, in cooperation with FRA and TJPA, issued a final Supplemental EIS/EIR ("SEIS/EIR"), examining changes to Phase 2 of the Transbay Program. In 2019, FTA issued an amended ROD. In 2023, TJPA adopted an addendum to the SEIS/EIR.

RECOMMENDATION AND NEXT STEPS

Port staff recommends approval of the attached Resolution 23-23, which (a) authorizes the Port Executive Director or her designee (a) to consent to the final ICA, in substantially the same form as before the Port Commission, after it is approved by the Board of Supervisors; and (b) authorizes the Executive Director or her designee to approve the Annual Scope and Budget (**ASB**) each fiscal year during the term of the ICA. As provided for in the ICA, the Port will be reimbursed by the TJPA for its actual staff time and expenses incurred on the Project.

Once approved by the appropriate City departments involved in the Project the ICA will be referred to the Board of Supervisors for approval via a single resolution, which is expected to occur in early June 2023.

Prepared by: Jamie Hurley, Development Projects Manager
Real Estate and Development

For: Josh Keene, Assistant Deputy Director
Real Estate and Development

Rebecca Benassini, Deputy Director
Real Estate and Development

Exhibit A: Form of Consent to Interagency Cooperation Agreement
Exhibit B: Form of Port of San Francisco Annual Scope and Budget
Exhibit C: Appendix A to the ICA
Exhibit D: Project Map

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 23-23

- WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and
- WHEREAS, The Transbay Joint Powers Authority (TJPA) is delivering the Transbay Program, a visionary transportation and housing project that has transformed downtown San Francisco and the San Francisco Bay Area's regional transportation system by creating a world class transportation hub in the heart of a new neighborhood; and
- WHEREAS, TJPA has completed Phase 1 of the Transbay Program, construction of the Salesforce Transit Center. The City consulted and cooperated with TJPA in aspects of the planning, design, construction, and financing of Phase 1, including through many intergovernmental agreements and memoranda of understanding between various City agencies and TJPA; and
- WHEREAS, TJPA is actively engaged in delivery of Phase 2 of the Transbay Program, the Downtown Rail Extension (the Project). The Project will connect Caltrain's regional rail system and the California High-Speed Rail Authority's statewide system to the Salesforce Transit Center in downtown San Francisco. The rail alignment will be constructed principally below grade to provide a critical link for Peninsula commuters and travelers on the state's future high-speed rail system; and
- WHEREAS, Under California Public Resources Code section 5027.1, TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program; and
- WHEREAS, The design, construction, and operation of the Project will affect certain Burton Act Parcels and, thus, TJPA requires certain permissions and approvals from the Port of San Francisco as the entity that owns and/or has the right to control such parcels; and
- WHEREAS, As in Phase 1, TJPA would benefit from the consultation, cooperation, expertise, and experience of the Port in certain matters related to the planning, design, and construction of the Project; and
- WHEREAS, The Project will bring direct and indirect benefits to City residents and the Public Trust by providing improved regional and statewide rail connections to downtown San Francisco though easier and more

efficient transit options for commuters, tourists, and business travelers will support downtown San Francisco businesses and contribute to the economic revitalization of San Francisco at large and the neighborhoods surrounding the Project in particular; and

WHEREAS, The Project will be advanced over the course of several years, and TJPA and the City expect the scope of services and work provided pursuant to the Agreement to change and adjust over time; and

WHEREAS, The City and TJPA desire to memorialize the interagency cooperation between the parties in an Interagency Cooperation Agreement (**ICA or Agreement**). The ICA provides for City's consultation and cooperation with TJPA to facilitate the planning, design, and construction of the Project; and

WHEREAS, TJPA and the City intend for the ICA to provide a flexible mechanism that will accommodate the evolving services and work that will be undertaken by the City for the Project as the Project advances; and

WHEREAS, The City and the TJPA commit to act cooperatively and in good faith to fulfill their respective roles in the ICA and to expeditiously advance and implement the Project; and

WHEREAS, San Francisco Public Works will serve as the liaison for distributing design and improvement plans, coordinating the City's responses to such plans, assisting departments and TJPA with dispute resolution and schedule adherence; and

WHEREAS, On April 22, 2004, by Motion No. 16773, the Planning Commission certified the final Environmental Impact Statement/Environmental Impact Report for the Transbay Program (2004 EIS/EIR) (Planning Department Case No. 2000.048E) in accordance with the California Environmental Quality Act (CEQA), the CEQA Guidelines (Cal. Code of Regulations Title 14, sections 15000 et seq.), and Chapter 31 of the San Francisco Administrative Code; and

WHEREAS, On June 15, 2004, by Motion No. 04-67, the Board of Supervisors affirmed the Planning Commission's certification of the 2004 EIS/EIR; and on September 28, 2004, by Resolution No. 612-04, adopted findings that various actions related to the Transbay Program complied with CEQA; and in 2005 and 2006, by Ordinance Nos. 124-05 and 99-06, adopted additional CEQA findings related to the Transbay Program; and

WHEREAS, Subsequent to the adoption of the Final EIS/EIR, the San Francisco Redevelopment Agency, the Successor Agency to the San Francisco Redevelopment Agency, and the TJPA have approved ten addenda to the 2004 EIS/EIR, and made requisite findings under CEQA; and

WHEREAS, In 2018, the Federal Transit Administration and TJPA prepared a joint Supplemental EIS/EIR to evaluate certain proposed changes to the Transbay Program (2018 SEIS/EIR); and on December 13, 2018, the TJPA certified the 2018 SEIS/EIR, approved certain revisions to the Transbay Program, adopted the additional mitigation measures identified therein, and adopted CEQA findings (2018 Transbay Program CEQA findings); and

WHEREAS, On January 12, 2023, the TJPA approved certain revisions to the DTX component of the Transbay Program (DTX Revisions), adopted an Addendum to the 2018 SEIS/EIR, which contains an analysis of the environmental effects that may result from the DTX Revisions, adopted a Revised Mitigation Monitoring and Reporting Program, attached to the ICA as Exhibit C, and determined that the DTX Revisions do not require major revisions to the 2018 SEIS/EIR due to new or substantially more severe environmental effects and do not require further environmental review; and

WHEREAS, On April 25, 2023, Port staff presented an information item to the Port Commission, which discussed the proposed terms of the ICA; and

WHEREAS, Port staff recommends Port consent to the proposed ICA; and now therefore be it

RESOLVED, That the Port Commission has reviewed and considered the 2004 EIS/EIR and subsequent addenda, the 2018 SEIS/EIR, the Addendum to the 2018 SEIS/EIR, all associated CEQA findings, and the record as a whole, and finds that approval of the Interagency Cooperation Agreement is within the scope of the project evaluated in these environmental review documents, that these environmental review documents are adequate for its use in approving the ICA, and that no further environmental review is required; adopts the 2018 Transbay Program CEQA findings; and adopts the Revised Mitigation Monitoring and Reporting Program; and be it further

RESOLVED, That the Port Commission hereby consents to San Francisco Public Works as the lead representative of the City for implementing the Interagency Cooperation Agreement as described in Section 6(a) of the ICA); and be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee, to consent to the final ICA, in substantially the same form on file with the Port Commission Secretary, with any additions, amendments or other modifications to the ICA that the Executive Director, in consultation with the City Attorney, determines, when taken as a whole, to be in the best interest of the Port, do not

Materially ncrease the obligations or liabilities of the Port, after it is approved by the Board of Supervisors; and be it further

RESOLVED, That the Port Commission authorizes the Executive Director or her designee, to approve the Annual Scope and Budget each fiscal year during the term of the ICA as provided for in Section 8 of the ICA.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of May 9, 2023.

Secretary

EXHIBIT A

**CONSENT TO INTERAGENCY COOPERATION AGREEMENT
PORT OF SAN FRANCISCO**

The Port of San Francisco (“**Port**”) has reviewed the Interagency Cooperation Agreement to which this Consent to Interagency Cooperation Agreement (this “**Agency Consent**”) is attached. Except as otherwise defined in this Agency Consent, initially capitalized terms have the meanings given in the Interagency Cooperation Agreement to which this Agency Consent is attached (as amended from time to time in accordance therewith, the “**Interagency Cooperation Agreement**”).

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

1. The Interagency Cooperation Agreement as it relates to matters under Port jurisdiction.
2. Authorizing the Port Executive Director, or her designee, under the Interagency Cooperation Agreement, to execute an Agency Scope & Budget for each Fiscal Year in accordance with the terms of the Interagency Cooperation Agreement.
3. [Consent to PW as the City’s lead representative for the ICA, as described in the Agreement.]
4. [Adopt CEQA findings and accept MMRP.]

CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation, acting by and through the
Port of San Francisco

By: _____

EXHIBIT B

PORT OF SAN FRANCISCO ANNUAL SCOPE & BUDGET (ASB)

This Appendix B-1 (this “**Annual Scope & Budget**” or “**ASB**”) between the Transbay Joint Powers Authority (“**TJPA**”) and the Port of San Francisco (a “**City Agency**” or “**Port**”), is attached to and made a part of the Interagency Cooperation Agreement between the Transbay Joint Powers Authority and the City and County of San Francisco Relating to the Downtown Rail Extension Project (the “**Agreement**”) relating to Phase 2 of the Transbay Program, the Downtown Rail Extension Project. The Project will connect Caltrain’s regional rail system and the California High-Speed Rail Authority’s statewide system to the Salesforce Transit Center in downtown San Francisco.

Definitions and rules of interpretation set forth in the main body of the Agreement apply to this ASB unless otherwise specified in this ASB. Unless specifically provided otherwise in this ASB, the terms of the body of the Agreement are incorporated herein. This ASB details the Port’s expected City Tasks and budget for those tasks under the Agreement for Fiscal Year 2023-2024, the time period from July 1, 2023 to June 30, 2024 (the “**Current Fiscal Year**”).

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

The Agreement contemplates that this Appendix B-1 may be amended, additional City Agencies may approve the Agreement and add new ASBs, and each City Agency’s ASB will be replaced each Fiscal Year in the manner set forth in the body of the Agreement. TJPA and each City Agency will follow the budgetary process described in Section 8(d) of the Agreement to revise that City Agency’s ASB each Fiscal Year, unless otherwise specified in that City Agency’s ASB. TJPA will reimburse each City Agency for its Eligible Costs in accordance with Section 8 of the Agreement. TJPA’s obligation to pay Eligible Costs will not exceed the amounts agreed upon in the ASBs each Fiscal Year except as provided in Section 8 of the Agreement. Each City Agency may suspend or discontinue that City Agency’s ongoing City Tasks under its ASB and the Agreement if its budget is exceeded in accordance with Section 3(c) of the Agreement, and each City Agency may elect not to enter into an ASB for a particular Fiscal Year, such that its City Tasks pursuant to an ASB may expire. Each City Agency’s individual ASB incorporates the general terms of the body of the Agreement except as may be otherwise specifically provided in its ASB. Each City Agency’s

annual ASB will not require the approval of the City’s Board of Supervisors except as part of the approval of the City Agency’s annual budget process, or if such ASB constitutes a Material Change pursuant to Section 15 of the Agreement.

1. Expected City Tasks (Port) Over Life of Project

Below is a summary of the expected City Tasks for the Port over the life of the Project. The particular City Tasks TJPA requests and the Port agrees to undertake in a Fiscal Year, and the budget for TJPA to compensate the Port for those tasks in that Fiscal Year, are described in Section 2 below.

Certain of the Proposed ROW Vacation Parcels are under the jurisdiction of the Port and are subject to the Public Trust. Transfer of easements in those parcels free of the Public Trust will require that TJPA first obtain authorization from the State of California to remove the Public Trust from such parcels prior to BOS action to vacate or grant an interest in them.

The Port will assist the TJPA draft the Public Trust Transfer Agreement and related documents.

The Port Commission will make findings required by the Public Trust and identify the streets to be added to the Public Trust (the “**Trust Addition Streets**”) in exchange for the streets that will be terminated from the Public Trust (the “**Trust Termination Streets**”).

The Trust Termination Streets must be equal or greater in size to the Trust Addition Streets.

The City’s Director of Property must determine, based on an independent MAI appraisal, that the Trust Addition Streets have an appraised value that is equal to or greater than the value of the Trust Termination Streets.

Trust Exchange documents include:

- Preliminary Negative Declaration
- CLTA Policy
- Joint Escrow Instructions
- Board of Supervisors Ordinance recording jurisdictional transfer of streets and street vacations
- Port Commission Resolution
- Public Trust Exchange Agreement
- Public Trust Patent
- Quitclaim Deed
- State Lands Commission approval
- Trust Termination Patent

Overall Budget Estimate (Not Broken Down by Year)

Category	Estimated Cost
Port Counsel (City Attorney Office)	\$60,000
Outside Counsel (Shute Mihaly)	\$50,000
Port Staff	\$20,000
State Lands Commission Work Order	\$10,000
Other 3 rd Party Costs (e.g. Appraisals, Surveys)	\$50,000
Sub-Total	\$190,000
Contingency (5%)	\$9,500
Grand Total	\$199,500

2. City Tasks and Budget (Port) FY 23-24

The City Tasks TJPA requests and the Port agrees to undertake in the Current Fiscal Year, and the budget for TJPA to compensate the Port for those City Tasks, are described in this Section 2.

A. City Tasks (Port) FY 23-24

The City Tasks TJPA requests and the Port agrees to undertake in the Current Fiscal Year are as follows:

All of the tasks as described in Section 1.

B. Budget (Port) FY 23-24

The Port’s time and expenses to be reimbursed under the Agreement in the Current Fiscal Year will not exceed One Hundred Ninety-Nine Thousand Five Hundred Dollars (\$199,500) (the “**Maximum Amount**”).

Port anticipates the following consultant and out of pocket expenses in the Current Fiscal Year: outside counsel, appraiser, State Lands Commission work order and surveyor services as indicated in Section 1.

To the extent a position title rate is not known at the time the Current Fiscal Year budget is finalized, the Port will provide a schedule of Port staff billing rates by position title with its first submission of quarterly billing to TJPA. All rates are subject to change, but any such changes must be consistent with what the Port charges other City departments. The Maximum Amount will include charges to the Port by the City Attorney in support of the Port’s City Tasks, and such City Attorney charges will be deducted from the Maximum Amount to compensate the City Attorney unless otherwise agreed.

3. Primary Points of Contact

The Port representative responsible for managing the City Tasks and budget is:
James Hurley, Development Project Manager
p: 415- 274-0598
james.hurley@sfport.com

The TJPA representative responsible for managing the City Tasks and budget is:
 Anna Harvey, Deputy Project Director – Engineering
 c: 415-672-2852
aharvey@tjpa.org

The Port and TJPA may change their representatives in connection with this ASB by providing written notice to TJPA with a copy to the Director of Public Works.

4. Port-specific provisions that are specific deviations from the main body of the Agreement

None.

The process and requirements detailed in Section 1 of this ASB are in addition to, and not in replacement of, the terms and conditions set forth in the main body of the Agreement.

This ASB is made and entered into as of the date of full execution as set forth below.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the PORT OF SAN FRANCISCO By: _____ NAME, TITLE Date: _____	TRANSBAY JOINT POWERS, a joint exercise of powers authority By: _____ Adam Van de Water Executive Director Date: _____
	Transbay Joint Powers Authority Board of Directors Resolution No. _____ Adopted: _____ Attest: _____ Secretary, TJPA Board
APPROVED AS TO FORM FOR CITY: DAVID CHIU, City Attorney By: _____ Deputy City Attorney	APPROVED AS TO FORM FOR TJPA: By: _____ Deborah Miller Legal Counsel

EXHIBIT C

APPENDIX A TO ICA CITY RIGHT-OF-WAY

This Appendix A, City Right-of-Way, is attached to and made a part of the Interagency Cooperation Agreement between the Transbay Joint Powers Authority and the City And County Of San Francisco Relating to the Downtown Rail Extension Project (the “**Agreement**”) for Phase 2 of the Transbay Program, the Downtown Rail Extension Project. Definitions and rules of interpretation set forth in the main body of the Agreement apply to this Appendix A. In the event of any inconsistency between the main body of the Agreement and this Appendix A, the main body of the Agreement will control.

I. PROJECT

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

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

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

II. CITY ROW

“**City ROW**” means the area across, along, beneath, in, on, over, under, upon, and within the dedicated public alleys, boulevards, courts, lanes, roads, sidewalks, spaces, streets, and ways within the City, as they now exist or hereafter will exist or which are or will be under the permitting jurisdiction of the Department of Public Works, as well as any such right-of-way under the jurisdiction of the Port or the Office of Community Investment and Infrastructure. The Parties anticipate that all City ROW impacted by the Project will be City Property.

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

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

A. Permanent Occupancy of City ROW.

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

B. Proposed City ROW Vacation Parcels.

The portions of City ROW that TJPA plans to request that City vacate and quitclaim to TJPA as long-term easements (collectively, the "**Proposed ROW Vacation Parcels**") are generally described as:

- 1) subsurface areas with a footprint of approximately _____ square feet, located approximately _____ feet below the surface of Natoma, Howard, Second, Tehama, and Clementina Streets, for the throat structure portion of the Project Improvements, as generally illustrated in the attached Exhibit A-1, sheet 2;
- 2) subsurface area with a footprint of approximately _____ square feet, located approximately _____ feet to _____ feet below the surface of Second Street, for the rail tunnel portion of the Project Improvements, including approximately _____ square feet of subsurface areas at the northeast corners with Folsom Street and Brannan Street for signal alcoves, as generally illustrated in the attached Exhibit A-1, sheets 2 and 3;
- 3) subsurface area with a footprint of approximately _____ square feet, located approximately _____ feet below the surface of Stanford Street, for the rail tunnel portion of the Project Improvements, as generally illustrated in the attached Exhibit A-1, sheet 3;

- 4) subsurface area with a footprint of approximately _____ square feet, located approximately _____ feet below the surface of Townsend Street, for the rail tunnel portion of the Project Improvements, as generally illustrated in the attached Exhibit A-1, sheet 3; and
- 5) subsurface area with a footprint of approximately _____ square feet, located approximately _____ feet below the surface of Berry Street, for the u-wall portion of the Project Improvements, as generally illustrated in the attached Exhibit A-1, sheet 4.

C. Process for Vacation of City ROW.

The process for TJPA to request City’s Board of Supervisors (“**BOS**”) or work with City Agencies for the vacation and quitclaim of the Proposed ROW Vacation Parcels will comply with City Code, including Charter Section 4.105, Administrative Code Section 2A.53, and Public Works Code Section 787 and all applicable City ordinances. The process for the vacation of City ROW, which is provided solely for illustrative purposes, is currently generally as outlined below:

- 1) Petition/Application: TJPA will submit all application materials necessary to request a street vacation to the Department of Public Works (“**PW**”), which will include requesting a General Plan Referral for street vacation of Proposed ROW Vacation Parcel(s).
- 2) General Plan and Planning Code: City Planning Commission or Department considers adopting a motion or determination, finding the street vacation(s) of the Proposed ROW Vacation Parcel(s) in conformity with General Plan and eight priority policies in Planning Code Section 101.1.
- 3) Redevelopment Plan: Where the Proposed ROW Vacation Parcels are within the jurisdiction of the Office of Community Investment and Infrastructure (“**OCII**”), OCII considers preparing a letter to City Planning Commission or Department, confirming that the street vacation(s) of the Proposed ROW Vacation Parcel(s) is consistent with the Transbay Redevelopment Plan.
- 4) Adjacent Property Owner Notice: PW, or TJPA, as authorized by PW, sends notice of proposed street vacation to adjoining property owners of Proposed ROW Vacation Parcel(s); PW will share adjoining property owner questions or comments with TJPA and may confer with TJPA in preparing responses and resolution of questions or comments if requested by TJPA.
- 5) Utility Relocation: TJPA prepares a memo to PW summarizing utility relocation plans; PW sends notice(s) of proposed street vacation to affected utilities and provides opportunity to comment; TJPA, with support/oversight from PW, responds to questions or comments.
- 6) Map: PW prepares SUR maps, supported, as necessary or preferred, by TJPA’s surveyor, describing area of Proposed ROW Vacation Parcel(s).
- 7) Valuation and Determination: San Francisco Real Estate Division (“**RED**”) prepares a memo describing its opinion of value for the Proposed ROW Vacation Parcels. RED’s valuation may consider the benefits expected to accrue to City as a result of the Project. An appraisal, and potentially an appraisal review, is required if the valuation is over \$10,000 unless the BOS excuses that requirement by ordinance.

- 8) Public Works Order: PW Director considers issuing an order recommending that the BOS conditionally vacate the Proposed ROW Vacation Parcels based on the findings required under state and local laws. PW Director considers issuing an order, recommending vacation of Proposed ROW Vacation Parcel(s), subject to conditions such as the following: (i) the property may only be used for the Project; (ii) the property cannot be conveyed to another party except to a successor governmental entity that will operate the Project; and (iii) if TJPA ceases its use of the property for more than 20 years or does not complete construction within 10 years from the date of this Agreement, City may exercise a right to terminate the easement(s) conveyed to TJPA; (iv) if the easement(s) are terminated, the Proposed ROW Vacation Parcel(s) will cease to be vacated and revert back to publicly dedicated City ROW and (v) any other conditions that PW Director deems necessary.
- 9) Board of Supervisors Resolution: A Committee of the BOS considers recommending a resolution, declaring its intention to vacate the Proposed ROW Vacation Parcel(s); the BOS considers adopting a resolution declaring its intention to vacate the Proposed ROW Vacation Parcel(s); resolution is posted and published as required by law. The BOS holds a hearing on the vacation of the Proposed ROW Vacation Parcel(s).
- 10) Board of Supervisors Ordinance: The BOS considers adopting an ordinance, ordering the vacation of the Proposed Vacation ROW Parcel(s), and approving the grant of an easement interest in the Proposed ROW Vacation Parcel(s) to TJPA (subject to conditions as recommended by PW Director or determined by the BOS). Approval of the ordinance requires two readings.
- 11) Easement Conveyance: Following the effective date of the BOS Ordinance, RED implements BOS Ordinance, executing and recording an easement interest for Proposed ROW Vacation Parcel(s).

D. Temporary Occupancy of City ROW

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

E. Trust Parcels

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

EXHIBIT D
PROJECT MAP