

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: August 12, 2021**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Chair of the TJPA Board of Directors to execute an Amendment and Restatement of Memorandum of Understanding with the East Cut Community Benefit District (“ECCBD”) to identify additional practices and procedures that will yield greater efficiency, transparency, and clarity regarding the ongoing implementation of the Greater Rincon Hill Community Benefit District Management Plan as it relates to Salesforce Park.

EXPLANATION:

On July 31, 2015, the Board of Supervisors of the City and County of San Francisco (“City”) adopted Resolution No. 299-15, which, among other things, (1) established the property-based business improvement district called the “Greater Rincon Hill Community Benefit District” which is now known as “The East Cut Community Benefit District” (“District”); (2) ordered the levy and collection of multi-year special assessments on parcels within the District (“Assessment Funds”); (3) approved the amended Greater Rincon Hill Community Benefit District Management Plan dated July 2015 (“Management Plan”); and (4) authorized the City to contract with a separate private entity to administer the improvements, services, and activities to be funded with the Assessment Funds.

On December 8, 2015, the Board of Supervisors of the City adopted Resolution No. 506-15, which authorized the City to enter into an agreement with the ECCBD to hold the Assessment Funds in trust and to use such funds exclusively for the purpose of implementing the Management Plan, and administering, managing, and providing the property-related services, improvements and activities to be funded with the Assessment Funds pursuant to the Management Plan (“Administration Agreement”), and on December 29, 2015 the Administration Agreement was fully executed.

The Management Plan provides that the annual maintenance and operation costs of Salesforce Park, the park on the roof of the Transit Center referred to in the Management Plan as “City Park” (“Park”), will be paid by as follows: (1) the ECCBD must use Assessment Funds to pay the portion of the Park’s annual expenses that is proportional to the Park’s 79.18% special benefit to nearby (within 500 feet) and adjacent properties within the District, up to the maximum amount of Assessment Funds the Management Plan allows to be used for Park expenses; and (2) TJPA must pay the remaining 20.82% of the Park’s annual expenses, which is the general benefit portion, and any non-assessable special benefit.

It should be noted that the Management Plan provides that TJPA must pay for and provide security services for the Park as part of TJPA’s overall security program for the Transit Center, and that TJPA is responsible for managing and operating the Park, including managing the Park’s security personnel and maintaining security operations at the Park consistent with TJPA’s security policies and procedures. The Management Plan further requires that although the ECCBD will not be responsible for maintaining the Park’s security, TJPA will work closely with the ECCBD’s community guides, private security services, and dispatch personnel as part of the overall effort to ensure that neighborhood security issues are properly abated.

The Management Plan requires, among other things, formation of a joint committee comprised equally of representatives from the ECCBD and TJPA to (1) establish the Park’s rules, regulations, and policies; (2) oversee the Park’s annual budget; (3) work with the Park’s public space service provider; and (4) advise TJPA on the operations and management of the Park. In 2017, TJPA and the ECCBD jointly formed the “City Park Committee,” now known as the “Salesforce Park Committee” (“Committee”), made up of four representatives appointed by the TJPA Executive Director and four members of the ECCBD Board of Directors, and which has been meeting periodically to discuss matters related to the management, operations, and budget for the Park.

On September 9, 2019, TJPA and the ECCBD entered into an MOU to formalize ongoing implementation of the Management Plan and confirm their understanding regarding the respective roles and responsibilities of the parties and the joint committee related to the Park.

Over the past year, ECCBD staff and select ECCBD Board members have been working collaboratively with TJPA staff to develop appropriate amendments to the MOU, and now present to the TJPA Board a proposed amended and restated version of the MOU (“Amended MOU”) for consideration that clarifies roles and responsibilities, processes and procedures, financial participation of the parties and how the recommendations of the Committee are conveyed to the TJPA Board of Directors. This Amended MOU has been recommended for approval by the Salesforce Park Committee, and is slated to be considered by the ECCBD Board of Directors at their earliest available opportunity.

KEY REVISIONS TO PRIOR MOU:

There are three major areas of revision accomplished through this Amended MOU – Governance Issues; Processes for Consideration of Major Items; and Park Funding. Highlights in each category follow:

Governance Issues

The Amended MOU clarifies agenda preparation, processing and posting procedures, and the frequency of regular meetings. Standing meeting agenda categories are created to streamline agendas and ensure opportunities for discussion of certain categories of items. A procedure for establishing an annual work calendar is adopted to enhance notice of potential items coming before the Committee. Clarity is provided as to how the Committee’s Chair shall provide reports to the TJPA Board of Directors, and how the Committee and individual Committee members articulate their positions on matters of concern that are before the TJPA Board of Directors for consideration.

Processes for Consideration of Major Items

The Amended MOU creates categories of “Major Items,” details how the Committee considers Major Items and includes clear paths for resolution of any potential vote deadlocks regarding Major Items. These Major Items (all related solely to the Park and not other areas of the transit center) are:

- Park Budget;
- Construction Plans and Contracts in excess of \$100,000 (affecting common areas of the Park);

- Service Contracts in excess of \$120,000 (for services primarily related to the Park, but excluding security-related and construction contracts) and including potential termination of same; and
- Park Policies and Procedures (related to public access or event permitting related to the Park).

The Amended MOU further details the processes of how the Committee shall consider the above-noted Major Items to ensure proper Committee input is provided before Major Items are finally considered by the TJPA for action.

Park Funding

The Amended MOU updates invoice processing to reflect our shared experiences since the Park's opening and provides for more frequent and regular payment by the ECCBD to the TJPA. The Amended MOU also adjusts certain methodologies used to identify Park operations and maintenance costs that are eligible to be funded with Assessment Funds and the special benefit portion of such costs. The Committee's input to TJPA's annual budgeting process relative to Park expenses is also modified to ensure adequate time is afforded the Committee for consideration of budgetary matters, and to ensure the Committee's position is clearly articulated to the TJPA Board of Directors when considering budget adoption.

FINANCIAL IMPACT:

The increase in operating funding under the Amended MOU is consistent with the FY 21-22 operating budget approved by the TJPA Board in June 2021. The approved budget assumed an increase in park-related activities and an increase in the ECCBD financial participation, based on the status of negotiations at the time of budget adoption. The parties propose revisions to the original MOU to better capture the Park's true operating and maintenance costs and the special benefit portion of such costs, including:

- True-up of appropriate allocation of janitorial and engineering costs attributable to the Park;
- Addition of allocation of expenses to maintain elevator and escalator services to the Park; and
- Addition of capital expenses for the Park.

These adjustments are shown in detail as Exhibits to the Amended MOU.

RECOMMENDATION:

Staff recommends that the Board authorize the Chair of the TJPA Board Directors to execute an Amendment and Restatement of Memorandum of Understanding with the East Cut Community Benefit District. While the TJPA Executive Director typically executes contracts and other agreements on behalf of the agency, staff recommends that the Board Chair execute this agreement because certain of its provisions may directly affect the Board's timing for consideration of certain actions as well as the types and timing of reports that are made to the Board at its meetings.

ENCLOSURES:

1. Resolution
2. Amendment and Restatement of Memorandum of Understanding

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On July 31, 2015, the Board of Supervisors of the City and County of San Francisco (“City”) adopted Resolution No. 299-15, which, among other things, (1) established the property-based business improvement district called the “Greater Rincon Hill Community Benefit District” which is now known as “The East Cut Community Benefit District” (“District”); (2) ordered the levy and collection of multi-year special assessments on parcels within the District (“Assessment Funds”); (3) approved the amended Greater Rincon Hill Community Benefit District Management Plan dated July 2015 (“Management Plan”); and (4) authorized the City to contract with a separate private entity to administer the improvements, services, and activities to be funded with the Assessment Funds; and

WHEREAS, On December 8, 2015, the Board of Supervisors of the City adopted Resolution No. 506-15, which authorized the City to enter into an agreement with the East Cut Community Benefit District (also “ECCBD”) to hold the Assessment Funds in trust and to use such funds exclusively for the purpose of implementing the Management Plan, and administering, managing, and providing the property-related services, improvements and activities to be funded with the Assessment Funds pursuant to the Management Plan (“Administration Agreement”); and

WHEREAS, On December 29, 2015, the City and the ECCBD entered into the Administration Agreement; and

WHEREAS, The Management Plan provides that the annual maintenance and operation costs of Salesforce Park, the park on the roof of the Transit Center referred to in the Management Plan as “City Park” (“Park”), will be paid by as follows: (1) the ECCBD must use Assessment Funds to pay the portion of the Park’s annual expenses that is proportional to the Park’s 79.18% special benefit to nearby (within 500 feet) and adjacent properties within the District, up to the maximum amount of Assessment Funds the Management Plan allows to be used for Park expenses; and (2) TJPA must pay the remaining 20.82% of the Park’s annual expenses, which is the general benefit portion, and any non-assessable special benefit; and

WHEREAS, The Management Plan provides that TJPA must pay for and provide security services for the Park as part of TJPA’s overall security program for the Transit Center; and

WHEREAS, The Management Plan further provides that TJPA is responsible for managing and operating the Park, including managing the Park’s security personnel and maintaining security operations at the Park consistent with TJPA’s security policies and procedures; and

WHEREAS, The Management Plan further requires that although the ECCBD will not be responsible for maintaining the Park’s security, TJPA will work closely with the ECCBD’s community guides, private security services, and dispatch personnel as part of the overall effort to ensure that neighborhood security issues are properly abated; and

WHEREAS, The Management Plan requires, among other things, formation of a joint committee comprised equally of representatives from the ECCBD Board of Directors and TJPA

to (1) establish the Park's rules, regulations, and policies; (2) oversee the Park's annual budget; (3) work with the Park's public space service provider; and (4) advise TJPA on the operations and management of the Park; and

WHEREAS, In 2017, TJPA and the ECCBD jointly formed the "City Park Committee," now known as the "Salesforce Park Committee" ("Committee"), made up of four representatives appointed by the TJPA Executive Director and four members of the ECCBD Board of Directors, and which has been meeting periodically to discuss matters related to the management, operations, and budget for the Park; and

WHEREAS, On September 9, 2019, TJPA and the ECCBD entered into an MOU to formalize ongoing implementation of the Management Plan and confirm their understanding regarding the respective roles and responsibilities of the parties and the joint committee related to the Park; and

WHEREAS, TJPA and ECCBD recognize that the MOU could benefit from amendments to clarify roles and responsibilities, processes and procedures, financial participation of the parties and how recommendations of the Committee are conveyed to the TJPA Board of Directors; and

WHEREAS, TJPA and ECCBD have negotiated in good faith to address appropriate adjustments to the MOU as reflected in the Amendment and Restatement of Memorandum of Understanding ("Amended MOU"); and

WHEREAS, The Salesforce Park Committee has recommended approval of the Amended MOU; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the TJPA Board Chair to execute an Amendment and Restatement of Memorandum of Understanding with the East Cut Community Benefit District in the form presented.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of August 12, 2021.

Interim Secretary, Transbay Joint Powers Authority

**AMENDMENT AND RESTATEMENT OF
MEMORANDUM OF UNDERSTANDING**

**Between Transbay Joint Powers Authority—The East Cut Community Benefit District for
Implementation of Management Plan Relating to Salesforce Park**

This Amendment and Restatement of Memorandum of Understanding (“MOU”), made and entered into as of _____, 2021, is between the Transbay Joint Powers Authority (TJPA), a joint exercise of powers authority, and The East Cut Community Benefit District (“The East Cut CBD”), a nonprofit corporation formerly named “Greater Rincon Hill Association.” This MOU amends and fully replaces a prior version entered into as of September 9, 2019.

RECITALS

This MOU is made with reference to the following facts and circumstances:

Whereas, TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program, one component of which is the Salesforce Transit Center (“Transit Center”); and

Whereas, On July 31, 2015, the Board of Supervisors (“Board of Supervisors”) of the City and County of San Francisco (“City”) adopted Resolution No. 299-15, which, among other things, (1) established the property-based business improvement district called the “Greater Rincon Hill Community Benefit District” which is now known as “The East Cut Community Benefit District” (“District”); (2) ordered the levy and collection of multi-year special assessments on parcels within the District (“Assessment Funds”); (3) approved the amended Greater Rincon Hill Community Benefit District Management Plan dated July 2015 (“Management Plan”); and (4) authorized the City to contract with a separate private entity to administer the improvements, services, and activities to be funded with the Assessment Funds; and

Whereas, On December 8, 2015, the Board of Supervisors of the City adopted Resolution No. 506-15, which authorized the City to enter into an agreement with The East Cut CBD to hold the Assessment Funds in trust and to use such funds exclusively for the purpose of implementing the Management Plan, and administering, managing, and providing the property-related services, improvements and activities to be funded with the Assessment Funds pursuant to the Management Plan (“Administration Agreement”); and

Whereas, On December 29, 2015, the City and The East Cut CBD entered into the Administration Agreement; and

Whereas, The Management Plan provides that the annual maintenance and operation costs of Salesforce Park, the park on the roof of the Transit Center referred to in the Management Plan as “City Park” (the “Park”), will be paid by as follows: (1) The East Cut CBD must use Assessment Funds to pay the portion of the Park’s annual expenses that is proportional to the Park’s 79.18% special benefit to nearby (within 500 feet) and adjacent properties within the District, up to the maximum amount of Assessment Funds the Management Plan allows to be

used for Park expenses, and (2) TJPA must pay the remaining 20.82% of the Park's annual expenses, which is the general benefit portion, and any non-assessable special benefit; and

Whereas, The Management Plan provides that TJPA must pay for and provide security services for the Park as part of the TJPA's overall security program for the Transit Center; and

Whereas, The Management Plan further provides that TJPA is responsible for managing and operating the Park, including managing the Park's security personnel and maintaining security operations at the Park consistent with TJPA's security policies and procedures; and

Whereas, The Management Plan further requires that although The East Cut CBD will not be responsible for maintaining the Park's security, TJPA will work closely with The East Cut CBD's community guides, private security services, and dispatch personnel as part of the overall effort to ensure that neighborhood security issues are properly abated; and

Whereas, The Management Plan requires, among other things, formation of a joint committee comprised equally of representatives from The East Cut Board of Directors and TJPA to (1) establish the Park's rules, regulations, and policies, (2) oversee the Park's annual budget, (3) work with the Park's public space service provider, and (4) advise the TJPA on the operations and management of the Park; and

Whereas, In 2017, TJPA and The East Cut CBD jointly formed the "City Park Committee," now known as the "Salesforce Park Committee" (herein, the "Committee"), made up of four representatives appointed by the TJPA Executive Director and four members of The East Cut CBD Board of Directors, and which has been meeting periodically since June 13, 2017, to discuss matters related to the management, operations, and budget for the Park; and

Whereas, On June 13 and August 23, 2017, the Salesforce Park Committee discussed and confirmed its support for draft Park Rules and Regulations ("Park Rules"), and on September 14, 2017, the TJPA Board of Directors adopted the Park Rules; and

Whereas, On February 28, 2018, the Salesforce Park Committee discussed and confirmed its support for the draft Code of Conduct ("Code"), which supplements the Park Rules and on March 8, 2018, the TJPA Board of Directors adopted the Code; and

Whereas, On May 10, 2018, the TJPA Board of Directors adopted a Non-Public Rental and Fee Schedule ("Rental and Fee Schedule"), which sets forth the TJPA's goals to, among other things, prioritize the public transit purpose of TJPA property, TJPA programming designed to engage and serve the public, and public access to TJPA property over nonpublic uses, which are goals that the Salesforce Park Committee shares; and

Whereas, On September 9, 2019, TJPA and The East Cut CBD entered into a prior version of this MOU (the "Prior MOU"), in order to formalize ongoing implementation of the Management Plan and confirm their understanding regarding the respective roles and

responsibilities of the parties and the joint committee related to the Park; and

Whereas, TJPA and The East Cut CBD now wish to amend and restate terms of the Prior MOU, to identify additional practices and procedures that they believe will provide greater efficiency, transparency, and clarity regarding their ongoing implementation of the Management Plan;

NOW, THEREFORE, IN CONSIDERATION of the foregoing, TJPA and The East Cut CBD hereby agree as follows:

A. Committee Governance and Operations.

In furtherance of the Management Plan’s requirement for formation of a joint committee, the existing joint committee shall be governed as follows:

1. The Committee shall continue to be comprised of four representatives appointed by the TJPA Executive Director (“TJPA Representatives”), and four representatives appointed by The East Cut CBD Board of Directors from among its members (“CBD Representatives”). At least one of the CBD Representatives shall be a District resident. Any number of the TJPA Representatives may also hold positions as members of The East Cut CBD Board of Directors.
2. All meetings of the Committee shall be noticed and conducted in compliance with the Ralph M. Brown Act. The East Cut CBD staff will continue to be responsible for providing administrative services for the Committee (*e.g.*, posting agenda notices, distributing packets, creating minutes, and maintaining website). To allow agendas to be prepared in compliance with the Brown Act, materials required to support Committee agenda items shall be provided to The East Cut CBD staff no later than five days in advance of the Committee meeting. All agenda materials shall be provided to the Committee members at the time the agenda is posted. On a monthly basis (unless otherwise agreed by the Committee; and in all cases in compliance with the Brown Act), the Committee shall meet to address matters that fall within the Committee’s jurisdiction as set forth in the Management Plan, as more specifically detailed in this MOU.
3. The presence of a majority of the full composition of the Committee is required to establish and maintain a quorum and, except where state law provides otherwise, to take any action.
4. At the first meeting held in each fiscal year, the Committee shall appoint one of its members to serve for the year as the Committee’s chairperson (“Chairperson”). The current Chairperson is a CBD Representative. In subsequent fiscal years, the Chairperson role shall alternate annually between CBD Representatives and TJPA

Representatives. In the event that a Chairperson is unable or unwilling to complete their term, the Committee shall appoint one of the three remaining members who are representatives of the same entity as the outgoing Chairperson to complete the outgoing Chairperson's term. Notwithstanding the foregoing, the TJPA Representatives may elect to forfeit their annual Chairperson opportunity in a particular year, in which case a CBD Representative shall serve as Chairperson for that fiscal year without forfeiting the CBD Representatives' opportunity to serve as Chairperson the following year.

5. In the event the Chairperson is absent from a Committee meeting, or is recused from considering an item before the Committee, the Committee shall appoint one of its members who is a representative of the same entity as the Chairperson and who is present at the meeting to chair the meeting.
6. The Chairperson shall schedule meetings, approve agendas for posting, call meetings to order, preside at meetings, make presentations to the TJPA Board and The East Cut CBD Board as appropriate, and perform other duties as necessary or incidental to the office. The Chairperson shall include on the agenda for a meeting any item within the Committee's jurisdiction requested by a Committee member at least five days prior to the meeting.
7. At least twice per year, and additionally upon the request of the Chairperson or the request of four members of the Committee, the Chairperson shall provide a report of the Committee's actions and recommendations related to the Park at a public meeting of the TJPA Board of Directors and at a public meeting of The East Cut CBD Board of Directors. Whenever a Committee report will be provided at a meeting of the Board of Directors of either entity, the report shall be listed as an item on the Board's agenda to allow the Board members to engage in a discussion of the item consistent with the requirements of the Brown Act. Any Committee member may submit a written supplement to the Chairperson's report, for inclusion in each entity's Board of Directors meeting agenda packet in which the report is agendaized. The scheduling of Committee reports at Board meetings under this paragraph is subject to the reasonable exercise of discretion by the TJPA Board Chair and/or Executive Director as to TJPA Board meetings, and The East Cut CBD President and/or Executive Director as to The East Cut CBD Board meetings, to set meeting agendas under the particular Board's bylaws, rules of order, or established policy or practice. To allow agendas to be prepared in compliance with the Brown Act, materials required to support such reports shall be provided to the applicable staff fourteen days in advance of the Board meeting, provided however this requirement shall not apply in the case of items that arise within fourteen days of the meeting and the time the agenda is posted.
8. The Committee may take action on matters within its jurisdiction as set forth in and consistent with the Management Plan. Any action done or made by a majority of the Committee members present at a meeting duly held at which a quorum is present is an action of the Committee. Special procedures for Major Items are set forth in Section B.,

below. Any Committee member present at a meeting duly held may make a motion for the Committee's consideration, so long as such motion is consistent with the requirements of state law, including the Brown Act. The Committee may adopt further rules of order to govern the conduct and procedure of its meetings. The Committee will keep written minutes of its proceedings.

9. Meetings of the Committee shall include the following standing agenda categories:
- (a) Forward Calendar: Primary purpose is to prepare, review, and update the Committee's Annual Work Calendar (as defined below).
 - (b) Park Budget: Primary purposes are to develop, review, and recommend for approval, rejection, or revision, a proposed annual Park Budget (as defined and contemplated in section B.2.a., below); review budget milestones; and periodically review budget-to-actuals.
 - (c) Park Contracts: Primary purposes are to recommend for approval, rejection, or revision, proposed contract awards for Major Park Common Area Construction (as defined below) and Major Park Services (as defined below); to receive updates on implementation of Park-related contracts for Major Park Services; and to discuss future contracting needs.
 - (d) Park Programs, Events, and Activities: Primary purposes are to receive updates on implementation of, and work with and advise TJPA on, Park programs, events, and activities; and recommend for approval, rejection, or revision, proposed programming-related Major Items.
 - (e) Park Condition: Primary purposes are to receive updates on, and work with and advise TJPA on, the physical condition of the landscape and hardscape of the common areas of the Park, including Major Park Common Area Construction; and to recommend for approval, rejection, or revision, proposed construction-related Major Items.
 - (f) New Business: Primary purpose is to provide an opportunity for any Committee member to request that the Chairperson add an item within the Committee's jurisdiction to a future Committee agenda.

Notwithstanding the above standing agenda categories, specific items for discussion and potential action within a category shall be identified on the Committee agenda in the manner required by the Brown Act.

10. The Committee may take action to adopt an annual forward-looking calendar ("Annual Work Calendar"), identifying upcoming expected items within the Committee's jurisdiction (*e.g.*, any proposed amendments to the Park Rules or Code; periodic review of and any proposed amendments to the Rental and Fee Schedule; anticipated Major Park Common Area Construction projects; anticipated Major Park Services contracts; Park Budget preparation milestones; any other Major Items). The Committee may take action to update the Annual Work Calendar, as needed. The parties recognize that while the Annual Work Calendar represents good faith estimates of the schedule for certain

actions related to the Park and is a useful tool for organizing the Committee's work, actual circumstances may require deviations from the calendar.

11. The Committee and each of its members and any agents acting on their behalf shall conform all of their activities to and carefully observe applicable federal, state, and local laws and regulations, including, but not limited to, those laws and regulations relating to open government, procurement, ethics, and conflicts of interest.

B. Committee Consideration of Major Items.

1. Committee Jurisdiction. The Management Plan empowers the Committee to (a) establish Park rules, regulations and policies to the extent the Park rules, regulations and policies do not relate to security personnel or security operations in the Park specifically or the Transit Center generally; (b) oversee the Park's annual budget; (c) work with the Park's public space service provider; and (d) advise the TJPA on the operations and management of the Park. TJPA and The East Cut CBD commit to work together cooperatively and in good faith to fulfill their respective duties under the Management Plan and ensure the success of the Park and Transit Center, as described in the Management Plan and implemented through this MOU.
2. Major Items. Due to the importance of certain items to the financing and operation of the Park, the parties are designating certain "Major Items," as follows:
 - a. Park Budget: a budget for Salesforce Park maintenance and operations (not including security services) ("Park Budget"), for the upcoming fiscal year. The Park Budget shall be in a form substantially similar to Exhibit C to this MOU. TJPA staff and East Cut CBD staff shall work together to prepare the proposed Park Budget for presentation to the Committee. The parties shall promptly provide information reasonably requested and necessary to enable the other party to participate meaningfully in development of the proposed Park Budget.
 - b. Construction Plans and Contracts: any proposed concept and final plans for TJPA construction or remodel of common areas within the Park that is expected to cost more than \$100,000 in construction costs; and proposed award of contract for such construction or remodel ("Major Park Common Area Construction").
 - c. Service Contracts: any proposed award of contracts for provision of services (excluding security-related contracts and construction contracts) primarily related to the Park and that are expected to cost \$120,000 or more, including but not limited to contracts for entertainment programming, horticulture/landscaping installation or maintenance, and architecture or design services ("Major Park Services"); and any decision to terminate such a contract for reasons other than (i) contractor's material breach, or (ii) that continuation of the contract through

the next Committee meeting would present a significant risk of interference with Park activities or significant risk of harm to Park property, attendees, staff, or finances. In appropriate cases, the TJPA may brief East Cut CBD staff in lieu of the Committee.

- d. Park Policies and Procedures: any policies or procedures related to public access or event permitting related to the Park, including but not limited to changes or TJPA Board consideration of the Park Rules, the Code, the Rental and Fee Schedule, and the Retail Merchandising Plan.
3. Procedures. As a condition of TJPA's receipt of Assessment Funds, the Committee shall have the opportunity to recommend approval, rejection, or revision of proposed Major Items before the TJPA takes action on such items, as follows:
 - a. Park Budget. The Committee shall have an opportunity on or before the first Wednesday in April to review, consider, and recommend approval, rejection, or revision of a proposed Park Budget before the TJPA takes action on the proposed Park Budget. If the Committee does not recommend approval of a proposed Park Budget by the second Wednesday in May, a proposed Park Budget may anytime thereafter be considered for action by the TJPA Board.
 - b. Other Major Items. With regard to any proposed Major Items other than the Park Budget, the Committee shall have at least one opportunity to review, consider, and recommend approval, rejection, or revision of a Major Item before the TJPA takes action on the proposed Major Item. If the Committee does not recommend approval of a proposed Major Item after such opportunity for consideration by the Committee, then upon request of any four members of the Committee, the Committee shall, consistent with the Brown Act, calendar a special meeting prior to the time when the TJPA is scheduled to take action on the Major Item to further consider the item; the TJPA will work in good faith to provide such information as the Committee reasonably requests in support of such special meeting.

TJPA Board staff reports for TJPA Board consideration of Major Items shall, in bold type, either indicate the Committee's position with regard to that item, or that the Committee was granted an opportunity to review the item pursuant to this Agreement but did not take a position. Any Committee member may submit written comments to the TJPA Board regarding a proposed Major Item, which shall be transmitted to the TJPA Board promptly upon receipt.

4. Relationship to TJPA Contract Award Procedures. With regard to Major Items that are proposed contracts, the requirements of this Section B supplement, but do not replace or supersede, TJPA's procurement processes and related legal obligations and restrictions. With regard to contract awards for which procedures set forth in this MOU cannot be

implemented consistent with legal requirements governing TJPA actions, then TJPA shall comply with such legal requirements, and the parties shall work collaboratively to facilitate the Committee's review and comment on proposed contract awards. In general, TJPA staff shall ensure East Cut CBD Committee members and staff have opportunities for meaningful input regarding RFPs and bid specifications on Major Items, and East Cut CBD Committee members and/or staff shall be invited, where permissible under TJPA procurement processes and conflict of interest rules, to sit on selection/evaluation panels for Major Items.

5. Emergency Action. As the owner of the facility and operator of the Park, the TJPA may be required to take prompt action to protect health and safety or to avoid physical damage to the facility. In such cases, TJPA may take such action without compliance with requirements of this Section B. In such cases the TJPA will report the action taken to the Committee at the next Committee meeting.

C. Park Funding.

In furtherance of the Management Plan's requirement that The East Cut CBD and TJPA to share the Park's assessable operation and maintenance costs, the parties agree as follows:

1. The East Cut CBD is responsible for using Assessment Funds to pay the portion of the Park's annual expenses that is proportional to the Park's 79.18% special benefit to nearby (within 500 feet) and adjacent properties within the District, up to the maximum amount of Assessment Funds the Management Plan allows to be used for Park costs. TJPA is responsible for paying the remaining 20.82% of the Park's annual expenses, which is the general benefit portion, as well as any non-assessable special benefit. Additionally, the TJPA is responsible for paying for all security services for the Park as part of the TJPA's overall security program for the Transit Center.
2. The TJPA shall invoice The East Cut CBD for Park expenses on a monthly basis. On the fifteenth (15th) day of the month following the applicable invoice period, TJPA shall transmit to The East Cut CBD an invoice in a form substantially similar to Exhibit A to this MOU, setting forth in detail the Park expenses for which TJPA concludes The East Cut CBD has an obligation to pay with Assessment Funds ("Park Invoice"), along with appropriate documentation to verify those expenses. As shown on Exhibit A, each invoice shall indicate the amount allocated towards the special benefit portion of the Park's operation and maintenance costs. For the budget line items for Engineering, Janitorial Contract, and Cleaning - Misc (Exhibit C, rows 12, 17, and 19 respectively), amounts allocated toward special benefit portion shall be actual amounts expended on services provided on Park property (as established through work-order contracting system or other written indication from service provider or TJPA regarding location of invoiced services) plus eighteen percent (18%) of such actual amount which represents overhead costs attributable to the item; all other budget line items shall be allocated

toward special benefit portion pursuant to percentage allocations set forth in Exhibit C, column F.

3. The East Cut CBD shall make commercially reasonable efforts to pay Park Invoices within forty five (45) days, but not later than sixty (60) days, after receipt of a Park Invoice from TJPA, The East Cut CBD shall pay the Park Invoice or provide TJPA with a written notice explaining the basis for withholding payment of any portion of the amount invoiced.
4. The parties recognize that both dedicated and shared Park expenses are appropriate for payment with Assessment Funds so long as those expenses are proportional to the Park's assessable special benefit within the limitations set forth in paragraph C(1) above. Dedicated expenses are expenses for which the service and/or activity is dedicated to the Park and the entire cost is attributable to the Park. Shared expenses are expenses for which the service and/or activity benefits the entire Transit Center, including the Park, and therefore only the portion of the cost that is attributable to the Park shall be considered a Park expense. Based on facts currently available and known to the parties, the parties have identified the categories of operating and maintenance expenses that are either dedicated or shared Park expenses, and established guidelines for determining the proportion of special benefit arising from the eligible expenses, as described in Exhibit B.
5. By September 15 of each year, TJPA shall provide to The East Cut CBD a letter confirming that the TJPA has met its obligation to expend the 20.82% general benefit portion of the Park's operation and maintenance costs for the prior fiscal year.
6. TJPA and The East Cut CBD commit to work together cooperatively and in good faith to resolve any disagreement over their respective Park funding obligations.
7. The Committee may take action to include in the Annual Work Calendar milestones related to preparation of the Park Budget.
8. The Committee may take action to include in the Annual Work Calendar milestones related to periodic review of the Park Budget's budget-to-actuals. The Committee shall review budget-to-actuals on a quarterly basis. Deviations in expenditures of more than 20% from budgeted amounts shall be agendaized for Committee review.

D. Miscellaneous

1. All notices, demands, requests or other communications given under this MOU to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

If to TJPA:

Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
Attn: Executive Director

If to The East Cut CBD:

The East Cut Community Benefit District
160 Spear Street, Suite 230
San Francisco, CA 94105
Attn: Executive Director

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

2. All recitals set forth above are hereby incorporated into the body of this MOU. This MOU implements but does not supersede the Management Plan. This MOU, including all exhibits attached, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written, between the parties related to the Park, except as to the Restricted Funds Agreement between the parties dated April 11, 2018.
3. Except as provided in paragraph D(5) below, this MOU shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.
4. This MOU may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
5. The term of this MOU shall begin when it is fully executed by the parties and terminate six months after the District ends without renewal. Notwithstanding the foregoing, either party may terminate this MOU without cause with 90 days prior written notice, provided, however, that the parties shall use good faith efforts to negotiate and enter into a new agreement to implement the joint committee and funding requirements for the Park under the Management Plan prior to such termination of this agreement. The 90-day notice requirement in this paragraph shall not apply to enforce the expense allocation guidelines set forth in Exhibit B. Should either party determine in good faith that any of the guidelines contained in Exhibit B is no longer consistent with the requirements of the Management Plan or applicable law, upon written notice to the other party, that guideline shall no longer be enforceable notwithstanding paragraph D(3) above. In the event such notice is provided, the parties shall use good faith efforts to agree in writing to an appropriate amendment to Exhibit B.

6. The formation, interpretation, and performance of this MOU shall be governed by the laws of the State of California. Venue for all litigation related to this MOU shall be in San Francisco.

7. Each person executing this MOU represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of the MOU and the performance of such party's obligations under the MOU have been duly authorized and that the MOU is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

8. This MOU describes certain terms and conditions related to the TJPA's eligibility to receive Assessment Funds. Nothing herein is intended to supersede or delegate the existing authorities of the TJPA.

IN WITNESS WHEREOF, the undersigned have indicated their approval:

Approved by:

TRANSBAY JOINT POWERS AUTHORITY

 Jeff Gee, Chair, Board of Directors

 Date

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

APPROVED AS TO FORM FOR TJPA

 Legal Counsel

 Interim Secretary, TJPA Board

[signatures continued on following page]

THE EAST CUT COMMUNITY BENEFIT DISTRICT

Katina Johnson, Chair, Board of Directors

Date

APPROVED AS TO FORM FOR
THE EAST CUT CBD

Julian Gross, General Counsel

EXHIBIT A
FORM OF INVOICE



TRANSBAY JOINT POWERS AUTHORITY

INVOICE

DATE: 4/16/2021
INVOICE #: CBD-09-2021
DUE: 5/16/2021

Bill To:

The East Cut Community Benefit District
C/o Andrew Robinson, Executive Director
160 Spear Street, Suite 230
San Francisco, CA 94105
arobinson@theeastcut.org

DESCRIPTION	AMOUNT
SF-Water,Power&Sewer (Electric), January 2021	-
Sabah International, January 2021	-
51251: ABM Industry, March 2021	-
51256: Recology, March 2021	-
BRV (Management Fee), March 2021	-
Total invoice billed to CBD (79.18% of Eligible expense to CBD)	-
Total Amount Billed (July 2020 - March 2021):	-
Paid to Date:	-
Amount Outstanding:	-
This Payment Due:	May 16, 2021
TOTAL	-

Make check payable to **Transbay Joint Powers Authority** and mail to:
425 Mission Street, Suite 250
San Francisco, CA 94105

**EXHIBIT A
FORM OF INVOICE
East Cut CBD Monthly Report**

Reporting Period: For the month of Mar-21

S.No.	Chart ID	Chart Account Name	TJPA account	Vendor	Vendor Invoice #	Vendor Invoice date	Portion of FY21-22 Budget that is Park Costs	Actual Special Benefit Incurred up to previous period (A)	Current Invoice			Portion of Invoice that is Park Costs		Portion of Invoice that is Special Benefit funded by CBD	
									Jan-21	Feb-21	Mar-21	%	Amount	%	Total
1	--	Utility - Electric	953, 975 - Park Utilities	SF-Water, Power, Sewer			\$ 239,360						17%	\$ -	\$ -
2	--	Utility - Water	953, 975 - Park Utilities	SF-Water, Power, Sewer			\$ 53,392						17%	\$ -	\$ -
3	--	Utility - Other	953, 975 - Park Utilities				\$ 23,120						17%	\$ -	\$ -
4	--	Sabah & PCD- Fire/Life Safety/Sprinkler/PA Systems Maintenance	962 - FLS5 Systems & Support	Sabah International			\$ 30,073						17%	\$ -	\$ -
5	51251	Janitorial Contract	958, 974 - Park Janitorial	ABM Industry			\$ 168,135						100% T&M + 18%	\$ -	\$ -
6	51256	Trash Removal	958, 974 - Park Janitorial	Recology			\$ 100,320						38%	\$ -	\$ -
7	51298	Cleaning - Misc	958, 974 - Park Janitorial	Waxie, Others			\$ 11,000						100% T&M + 18%	\$ -	\$ -
8	--	Landscaping	973 - Park General Maintenance	Gachina Landscape Management			\$ 310,193						100%	\$ -	\$ -
9	51451	Engineering Contract	957	Enovity			\$ 66,000						100% T&M + 18%	\$ -	\$ -
10	51903	Exterminating	957	Crane Pest Control			\$ 8,495						17%	\$ -	\$ -
11	57099	Administrative Exp-Other (BRV)	971 - Total Park Maintenance & Programming				\$ 6,500						100%	\$ -	\$ -
12	57330	Marketing	971 - Total Park Maintenance & Programming				\$ 6,800						100%	\$ -	\$ -
13	57470	Promotion/Special Events (BRV)	971 - Total Park Maintenance & Programming	The Wright Gardner			\$ 270,950						100%	\$ -	\$ -
14	--	Park Management Fee & Administration	970 - Total Park Management Fee & Administration	BRV			\$ 480,000						100%	\$ -	\$ -
15	--	Elevator / Otis	957	Otis			\$ 39,398						19%	\$ -	\$ -
16	--	Escalator / Schindler	957	Schindler			\$ 25,595						10%	\$ -	\$ -
17	--	Elevator Housing Access	972, 490				\$ 60,000						100%	\$ -	\$ -
18	--	Holiday lighting elements	972, 490				\$ 40,000						100%	\$ -	\$ -
19	--	Assorted Glass Replacement	972, 490				\$ 100,000						100%	\$ -	\$ -
TOTAL							\$ 2,039,381	\$ -	\$ -	\$ -	\$ -	\$ -	100%	\$ -	\$ -

EXHIBIT B
DEDICATED AND SHARED EXPENSES

Exhibit B
Eligible Expenses
Basis for Allocation of Shared Expenses

	square feet	% of total
Rooftop Park Level - Common Area ¹	216,000	17%
Rooftop Park Level - Commercial	11,700	1%
Bus Deck Level	198,700	16%
Second Level	85,100	7%
Ground Level	152,100	12%
Lower Concourse Level	297,500	24%
Train Platform Level	<u>297,500</u>	<u>24%</u>
Total	1,258,600	100%
Above grade facility - Common Area	560,300	



Transit Center Square Footage by Level and Type

Level	Commercial Areas	Public Circulation	Vertical Circulation	Back of House	Transit	Open space	Total Square Footage
Rooftop Park Level	11700	1700	5600	6500		202200	227700
Bus Deck Level		69100	8100	7800	113700		198700
Second Level	57900	5400	10400	11400			85100
Ground Level	33700	64100	10000	17200	27100		152100
Train Platform Level			2600	18200	276700		297500
Lower Concourse Level			3500	108300	185700		297500
Total Square Footage	103300	140300	40200	169400	603200	202200	1258600

Note 1: The rooftop park common area is made up the total square footage of the rooftop park level less the commercial area.

	A	B	C	D	E	F
1	Exhibit B					
2	Eligible Expenses					
3	Categorization and Allocation of Eligible Expenses¹					
4	TJPA ID	LPC ID	LPC Account Name	Categorization²	Allocation to Determine Park Costs³	Notes
5	Management & Administration					
6	951	50010	Property Mgmt Sal-Oper	Shared	0%	Ground level, second level, bus deck level, and park level; no separate contract for Park
7	970	--	Park Management Fee & Administration	Dedicated	100%	Specific to Park
8	General Maintenance					
9	957	--	Elevator / Otis	Shared	19%	number of cabs that serve the Park (11) out of total floors in the facility (56)
10	957	--	Escalator / Schindler	Shared	10%	number of sets that serve the Park (2) out of total sets in the facility (19)
11	957	51451	Engineering	Shared	3%	Facility wide; invoicing and payment shall be those amounts expended on services provided to park (as established through work-order contracting or similar) + 18% of such actual amount for overhead; percent in column E based on analysis of prior year's invoices - estimate only for budget purposes
12	957	51903	Exterminating	Shared	17%	Facility wide; no separate contract for Park
13	973	--	Landscaping	Dedicated	100%	Specific to Park
14	962	--	Sabah & PCD- Fire/ Life Safety/Sprinkler/PA Systems Maintenance	Shared	17%	Facility wide; no separate contract for Park
15	Janitorial					
16	958, 974	51251	Janitorial Contract	Shared	11%	Facility wide; invoicing and payment shall be those amounts expended on services provided to park (as established through work-order contracting or similar) + 18% of such actual amount for overhead; percent in column E based on analysis of prior year's invoices - estimate only for budget purposes
17	958, 974	51256	Trash Removal	Shared	38%	Ground level, second level, bus deck level, and park level; no separate contract for Park
18	958, 974	51298	Cleaning - Misc	Shared	11%	Facility wide; invoicing and payment shall be those amounts expended on services provided to park (as established through work-order contracting or similar) + 18% of such actual amount for overhead; percent in column E based on analysis of prior year's invoices - estimate only for budget purposes
19	Utilities					
20	953, 975	51012	Utility - Electric	Shared	17%	Park not separately metered
21	953, 975	51034	Utility - Water	Shared	17%	Park not separately metered
22	953, 975	51049	Utility - Other	Shared	17%	Park not separately metered
23	Programming					
24	971	57330	Marketing	Dedicated	100%	Specific to Park (e.g., website content, posters, flyers, temp signs, ad buys, social media ad buys)
25	971	57099	Admins Exp - Other (BRV)	Dedicated	100%	Specific to Park
26	971	57470	Promotion/Special Events (BRV)	Dedicated	100%	Specific to Park (e.g., programming, performer fees, concert series, amenity staffing)
27	Capital Maintenance / Repair / Replacement					
28	972, 490	--	Elevator Housing Access	Dedicated	100%	Vs. use of lift; Estimate - first year for roll-out of capital plan, little history to guide us on this yet
29	972, 490	--	Holiday lighting elements	Dedicated	100%	New electric locations through out park; Estimate - first year for roll-out of capital plan, little history to guide us on this yet
30	972, 490	--	Assorted Glass Replacement	Dedicated	100%	Annual recurring; Estimate - first year for roll-out of capital plan, little history to guide us on this yet
31						
32	Notes:					
33	1. Scope of eligible expenses, categorization of eligible expenses, and allocation of eligible expenses are subject to change consistent with the Management Plan and applicable law.					
34	2. "Dedicated expenses" are expenses for which the service and/or activity is dedicated to the Park and the entire cost is attributable to the Park. "Shared expenses" are expenses for which the service and/or activity benefits the entire Transit Center, including the Park, and therefore only the portion of the cost that is attributable to the Park shall be considered a Park expense.					
35	3. Allocation of shared expenses is based on either: - proportion of Park level common area square feet (~216,000SF) to total facility square feet (~1,258,600SF) (=17%) - proportion of Park level common area square feet (~216,000SF) to total common area square feet of ground level, second level, bus deck level, and rooftop park level (~560,300SF) (=38%) - as noted in the Notes column					
36						

EXHIBIT C
FORM OF ANNUAL PARK BUDGET

A	B	C	D	E	F	G	H	I	J	
1	Exhibit C									
2	Park Budget Template									
3										
4										
5	TJPA ID	LPC ID	LPC Account Name	Categorization²	FY 21-22 Budget (Preliminary as of 6/2/21)	Allocation to Determine Park Costs³	Share of FY21-22 Budget that Is Park Costs	Share of FY21-22 Park Costs that is Special Benefit (79.18%)	Share of FY21-22 Park Costs that is General Benefit (20.82%)	Notes
6	Management & Administration				\$ 1,263,255		\$ 480,000	\$ 380,064	\$ 99,936	
7	951	50010	Property Mgmt Sal-Oper	Shared	\$ 783,255	0%	\$ -	\$ -	\$ -	Ground level, second level, bus deck level, and park level; no separate contract for Park
8	970	--	Park Management Fee & Administration	Dedicated	\$ 480,000	100%	\$ 480,000	\$ 380,064	\$ 99,936	Specific to Park
9	General Maintenance				\$ 3,200,373		\$ 479,754	\$ 379,869	\$ 99,885	
10	957	--	Elevator / Otis	Shared	\$ 207,360	19%	\$ 39,398	\$ 31,196	\$ 8,203	number of cabs that serve the Park (11) out of total floors in the facility (56)
11	957	--	Escalator / Schindler	Shared	\$ 255,952	10%	\$ 25,595	\$ 20,266	\$ 5,329	number of sets that serve the Park (2) out of total sets in the facility (19)
12	957	51451	Engineering	Shared	\$ 2,200,000	3%	\$ 66,000	\$ 52,259	\$ 13,741	Facility wide; invoicing and payment shall be those amounts expended on services provided to park (as established through work-order contracting or similar) + 18% of such actual amount for overhead; percent in column F based on analysis of prior year's invoices - estimate only for budget purposes
13	957	51903	Exterminating	Shared	\$ 49,968	17%	\$ 8,495	\$ 6,726	\$ 1,769	Facility wide; no separate contract for Park
14	973	--	Landscaping	Dedicated	\$ 310,193	100%	\$ 310,193	\$ 245,611	\$ 64,582	Specific to Park
15	962	--	Sabah & PCD- Fire/ Life Safety/Sprinkler/PA Systems Maintenance	Shared	\$ 176,900	17%	\$ 30,073	\$ 23,812	\$ 6,261	Facility wide; no separate contract for Park
16	Janitorial				\$ 1,892,500		\$ 279,455	\$ 221,272	\$ 58,183	
17	958, 974	51251	Janitorial Contract	Shared	\$ 1,528,500	11%	\$ 168,135	\$ 133,129	\$ 35,006	Facility wide; invoicing and payment shall be those amounts expended on services provided to park (as established through work-order contracting or similar) + 18% of such actual amount for overhead; percent in column F based on analysis of prior year's invoices - estimate only for budget purposes
18	958, 974	51256	Trash Removal	Shared	\$ 264,000	38%	\$ 100,320	\$ 79,433	\$ 20,887	Ground level, second level, bus deck level, and park level; no separate contract for Park
19	958, 974	51298	Cleaning - Misc	Shared	\$ 100,000	11%	\$ 11,000	\$ 8,710	\$ 2,290	Facility wide; invoicing and payment shall be those amounts expended on services provided to park (as established through work-order contracting or similar) + 18% of such actual amount for overhead; percent in column F based on analysis of prior year's invoices - estimate only for budget purposes
20	Utilities				\$ 1,858,070		\$ 315,872	\$ 250,107	\$ 65,765	
21	953, 975	51012	Utility - Electric	Shared	\$ 1,408,000	17%	\$ 239,360	\$ 189,525	\$ 49,835	Park not separately metered
22	953, 975	51034	Utility - Water	Shared	\$ 314,070	17%	\$ 53,392	\$ 42,276	\$ 11,116	Park not separately metered
23	953, 975	51049	Utility - Other	Shared	\$ 136,000	17%	\$ 23,120	\$ 18,306	\$ 4,814	Park not separately metered
24	Programming				\$ 284,250		\$ 284,250	\$ 225,069	\$ 59,181	
25	971	57330	Marketing	Dedicated	\$ 6,800	100%	\$ 6,800	\$ 5,384	\$ 1,416	Specific to Park (e.g., website content, posters, flyers, temp signs, ad buys, social media ad buys)
26	971	57099	Admins Exp - Other (BRV)	Dedicated	\$ 6,500	100%	\$ 6,500	\$ 5,147	\$ 1,353	Specific to Park
27	971	57470	Promotion/Special Events (BRV)	Dedicated	\$ 270,950	100%	\$ 270,950	\$ 214,538	\$ 56,412	Specific to Park (e.g., programming, performer fees, concert series, amenity staffing)
28	Capital Maintenance / Repair / Replacement				\$ 200,000		\$ 200,000	\$ 158,360	\$ 41,640	
29	972, 490	--	Elevator Housing Access	Dedicated	\$ 60,000	100%	\$ 60,000	\$ 47,508	\$ 12,492	Vs. use of lift; Estimate - first year for roll-out of capital plan, little history to guide us on this yet
30	972, 490	--	Holiday lighting elements	Dedicated	\$ 40,000	100%	\$ 40,000	\$ 31,672	\$ 8,328	New electric locations through out park; Estimate - first year for roll-out of capital plan, little history to guide us on this yet
31	972, 490	--	Assorted Glass Replacement	Dedicated	\$ 100,000	100%	\$ 100,000	\$ 79,180	\$ 20,820	Annual recurring; Estimate - first year for roll-out of capital plan, little history to guide us on this yet
32										
33	Sum Total						\$ 2,039,331	\$ 1,614,742	\$ 424,589	