

**CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO PUBLIC WORKS**

MEMORANDUM OF AGREEMENT

between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

and

CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO PUBLIC WORKS

for the

DeLong Steet Acceptance Project

This Memorandum of Agreement ("Agreement") is entered into as of the 14 day of December, 2023 ("Effective Date") by and between the San Francisco Bay Area Rapid Transit District ("BART") and the City and County of San Francisco ("City"), acting by and through San Francisco Public Works, referred to collectively as "Parties" or individually as "Party."

RECITALS

WHEREAS, BART and City enter into this Agreement whereby BART will provide non-construction costs relating to the planned conveyance of a portion of DeLong Street, generally located between San Diego and Santa Cruz Avenues in San Francisco, CA ("DeLong Street"), the precise boundaries of which will be identified as part of the implementation of this Agreement); and

WHEREAS, BART and City desire to entered into this Agreement to establish each Party's roles and responsibilities with respect to, and the terms and conditions for, the acceptance by the City of DeLong Steet as set forth herein:

AGREEMENT

NOW, THEREFORE, BART and City agree as follows:

1. **Agreement and Purpose.** The purpose of this Agreement is to outline roles and responsibilities of BART and the City with respect to participation in the District's conveyance to, and the City's acceptance of DeLong Street.

2. **Roles and Responsibilities.** The Parties agree to the following roles and responsibilities:
 - a. **City:** The City shall:
 - i. Conduct all field surveying necessary to establish and/or verify the legal boundaries of the area being accepted and collect data to be used to prepare the documents for the street acceptance process.
 - ii. Set new monuments and prepare and file a Record of Survey.
 - iii. Validate and prepare the necessary A-17 Street Dedication Map and Q-20 Maps, as applicable.
 - iv. Prepare the Public Works Director's Order, as necessary.
 - v. Prepare for and conduct San Francisco Board of Supervisors hearing and presentation necessary for the acceptance of DeLong Street by the City.
 - vi. Complete additional work required for the conveyance, as needed: Certificate of Compliance, obtain new Assessor's Parcel Number(s), prepare/review Legal Description and plat to be attached to the deed, etc.
 - vii. Bear all costs of the foregoing that are either unaccompanied by appropriate documentation as provided in Section 2.b.ii of this Agreement or that are in excess of the BART contribution limit of \$75,000.
 - b. **BART:** BART shall:
 - i. Contribute toward the City's costs for the work identified in Section 2.a in an amount not to exceed \$75,000.
 - ii. Pay City invoices accompanied by appropriate documentation for actual costs associated with performing these services.
 - iii. Provide feedback on the scope of work for the surveying work on DeLong Street.
 - iv. Prepare Offer of Dedication, Offer of Improvements, as applicable.
3. **Term.** The term of this Agreement shall commence on the Effective Date and shall, unless otherwise terminated by mutual agreement of the Parties pursuant to Section 4, terminate upon acceptance by the City of BART's offer of dedication of DeLong Street.
4. **Termination.** BART and the City shall have the option, by mutual written agreement, to terminate this Agreement, at any time during the term hereof.
5. **Notices.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the Parties may be by U.S. Mail or by e-mail and shall be addressed as follows:

BART: Joseph M. Basuino
Group Manager, Real Estate & Property Management
San Francisco Bay Area Rapid Transit District
2150 Webster Street, 9th Floor
Oakland, CA 94612
jbasuin@bart.gov
(510) 464-6852

CITY: Kate Anderson
County Surveyor, Bureau of Street Use & Mapping
San Francisco Public Works
49 South Van Ness Avenue, 9th Floor
San Francisco, CA 94103
katharine.anderson@sfdpw.org
(628) 271-2132

6. **Mutual Indemnification.** City shall defend, indemnify, and hold BART and its officers, directors, employees, and agents harmless from any and all claims, demands, suits, loss, damages, injury, and liabilities ("Claims"), direct or indirect (including reasonable attorney's fees and any and all costs and expenses in connection therewith), related to or as a result of City's performance of this Agreement to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of City, its employees, or subcontractors. City further agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of City services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any materials furnished under this Agreement. BART shall defend, indemnify, and hold BART and its officers, directors, employees, and agents harmless from any and all Claims, direct or indirect (including reasonable attorney's fees and any and all costs and expenses in connection therewith), related to or as a result of BART's performance of this Agreement to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of BART, its employees, or subcontractors. BART further agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its directors, officers, agents and employees, or any of them, arising out of BART services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

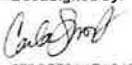
7. **Insurance.** The City will require that any contractor performing any scope of work or activities related to its obligations pursuant to Section 2.a of this Agreement will comply with the City insurance requirements.
8. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by the Parties in the same manner as this Agreement.
9. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco, CA.
10. **Audit and Inspection of Records.** The Parties agree to maintain and make available to each other, during regular business hours, accurate books and accounting records relating to their work under this Agreement and the work of any third parties performing work on the Project. The Parties will permit each other to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreements. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than three years after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the Parties by this Section. Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.
11. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become effective when there exist copies hereof which, when taken together, bear the authorized signatures of each of the Parties hereto.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed on the date set forth above.

CITY

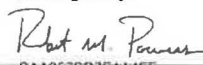
BART

Approved by:

DocuSigned by:

073CF73A4EA8486...

Carla Short
Interim Director
San Francisco Public Works

12/14/2023
Date: _____

DocuSigned by:

8AA357BD7E1A4FF...

Robert Powers
General Manager
San Francisco Bay Area Rapid Transit
District

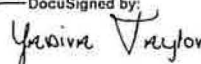
12/13/2023
Date: _____

Approved as to Form:

Approved as to Form:

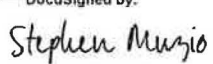
David Chiu
City Attorney

Attorney

By: DocuSigned by:

B8A6D1C5734C4DF...

Yadira Taylor
Deputy City Attorney

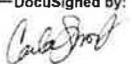
12/13/2023
Date: _____

DocuSigned by:

551218156346402...

Stephen Muzio
Attorney

11/13/2023
Date: _____

Approved by:

DocuSigned by:

073CF73A4EA8486...

Carla Short
Interim Director
San Francisco Public Works

12/14/2023
Date: _____