



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Fred Kelley
Director, Oakland
Department of
Transportation

SUBJECT: Funding and Reimbursement
Agreements for TOWN Projects

DATE: October 27, 2022

City Administrator Approval 

Date: Nov 4, 2022

RECOMMENDATION

1. **Adopt a Resolution Authorizing The City Administrator To:**
 - 1) **Accept And Appropriate Transit And Intercity Capital Rail Program (TIRCP) Grant Funds In The Amount Of Ten Million Seven Hundred Thirty-Two Thousand Dollars (\$10,732,000) To Implement The Oakland Waterfront Mobility Hub, Administered By The California State Transportation Agency (CalSTA); And**
 - 2) **Accept And Appropriate Community Project Funding/Congressionally Directed Spending (CPFCDs) Grant Funds In The Amount Of Two Million Dollars (\$2,000,000) To Implement The 7th Street Connection Project, Administered By The Federal Highway Administration (FHWA); And**
 - 3) **Amend Resolution No. 89039 C.M.S., Which Accepted And Appropriated United State Department Of Transportation Rebuilding American Infrastructure With Sustainability And Equity (RAISE) Grant Program Funds Totalling Fourteen Million Five Hundred And Seven Thousand Seventy-Five Dollars (\$14,507,075), To Appropriate The RAISE Funds To The Correct Fund Account; And**
 - 4) **Accept And Appropriate Measure BB Funds From The Alameda County Transportation Commission (ACTC) In The Amount Of Ten Million, Two Hundred Thousand Dollars (\$10,200,000), To Implement Improvements On Broadway As Match To The RAISE Grant, Pending Final Approval From ACTC; And**
 - 5) **Adopt Appropriate California Environmental Quality Act (CEQA) Findings; And**
2. **Adopt a Resolution to Authorize The City Administrator To:**
 - 1) **Execute A Memorandum Of Understanding Between The City And The Port To Facilitate The Development Of Transportation Projects Both Within And Outside The Port Area; And**

- 2) Accept And Appropriate California State Transportation Agency (CalSTA) Grant Funds Totaling Up To Two Hundred Fifty Nine Million Five Hundred Thousand Dollars (\$259,500,000); And**
 - 3) Take All Steps Necessary To Apply For And Receive Additional Funds Necessary To Complete The Projects As Set Forth In The MOU; And**
 - 4) Adopting Appropriate California Environmental Quality Act (CEQA) Findings**
- 3. Adopt A Resolution Authorizing The City Administrator To Negotiate And Execute An Agreement With Union Pacific Railroad Company (UPRR), In Accordance With California Public Utility Commission (CPUC) Regulations, For The Review Of The Embarcadero Corridor Safety Improvements, Upon Execution Of A Signed Memorandum Of Understanding Between The City And The Port Of Oakland To Facilitate The Development Of Transportation Projects Both Within And Outside The Port Area And An Executed Supplemental Agreement That Includes Costs To Reimburse UPRR Between The Port Of Oakland And The California State Transportation Agency (CalSTA) That Includes Costs To Reimburse UPRR And Adopting Appropriate California Environmental Quality Act (CEQA) Findings.**

EXECUTIVE SUMMARY

Staff is recommending that the City Council adopt three proposed resolutions necessary to advance implementation of the Transforming Oakland's Waterfront Neighborhoods (TOWN) projects. The TOWN projects together comprise a comprehensive package of infrastructure improvements that will implement longstanding City of Oakland (City) transportation plans and policies, help reconnect West Oakland, Chinatown, and Downtown and Old Oakland to the Jack London District and waterfront, facilitate goods movements, and enhance safety, sustainability and equity for all users. The TOWN projects would also provide connections to the proposed Oakland Waterfront Ballpark District.

The attached resolutions are proposed as part of a larger strategy, set forth in greater detail in the Information Memorandum dated as of September 20, 2022 to implement the City Council's July 2021 direction that staff "pursue ... the use of Federal, State, Regional, and other funding sources for the [Oakland Waterfront Ballpark District's] offsite transportation infrastructure" and "make every reasonable effort to protect the City's General Fund". The resolutions would enable the Oakland Department of Transportation (OakDOT) to utilize awarded funds from external sources to deliver various components of the TOWN projects, authorize the City Administrator to enter into and implement a Memorandum of Understanding between the City and Port of Oakland (Port) pertaining to collaboration on funding and implementing certain TOWN projects, and to begin the design process for TOWN improvements along the Embarcadero West corridor with the Union Pacific Railroad (UPRR) company by entering into a standard reimbursement agreement in accordance with the California Public Utility Commission (CPUC) regulations.

BACKGROUND / LEGISLATIVE HISTORY

The TOWN projects are a comprehensive package of infrastructure improvements that will strengthen connections between West Oakland, Chinatown, Downtown and Old Oakland, and the Jack London District, including potential new public access opportunities and amenities at the waterfront, while enhancing goods movements and safety for all users. It includes 16 complex capital infrastructure projects as well as the implementation of a new downtown parking management plan called OakPARK+, each of which is summarized below. A comprehensive list and detailed descriptions of all TOWN projects is available in **Attachment A**.

- Active Transportation & Transit: 1.4 miles of new transit-only lanes and 10 miles of new sidewalks, bike lanes and trails connecting the greater downtown, Chinatown, and West Oakland to one another and the waterfront to encourage walking, biking and transit.
- Rail Safety & Goods Movement: Rail corridor and roadway improvements to help move trucks and cargo in and out of the Port efficiently, reduce traffic congestion and truck idling, and improve traffic safety for all.
- Parking & Traffic Management: A comprehensive suite of parking system upgrades and intersection improvements to manage on- and off-street parking and traffic.

While the TOWN projects would also facilitate development of the proposed Oakland Waterfront Ballpark District, it is important to note that many of these offsite infrastructure improvements have long been identified as beneficial for advancing the safety, sustainability and equity goals of the City, independent of the proposed Oakland Waterfront Ballpark District. The projects have been intentionally designed to maximize community benefit, align with existing City plans, many of which have been adopted by City Council (see **Attachment B**), and reduce equity disparities as identified in a racial equity analysis of the transportation plan (**Attachment C**).

On July 20, 2021, the City Council approved a term sheet for the proposed Oakland Waterfront Ballpark District pursuant to Resolution No. 88744 C.M.S. that included, among other things, a directive for staff to pursue, with support from the Oakland A's, the use of Federal, State, Regional, and other infrastructure funding sources for the TOWN projects. In two letters to the City Council dated as of December 16, 2021, the Port affirmed "the interconnectedness of Port and City land uses, transportation infrastructure and related planning issues and processes" and identified certain Seaport Compatibility Measures for the proposed Oakland Waterfront Ballpark District, which the Port deemed necessary to ensure "non-interference with ingress and egress of trucks and other seaport transportation vehicles into and from seaport and avoiding congestion of seaport-related traffic routes, and...safety of and avoiding conflict between trains, vehicles, bicyclists, pedestrians, and other modes of transportation." Finally, on February 17, 2022, the City Council certified the Final Environmental Impact Report (EIR) for the Project, imposing certain mitigations and making additional non-CEQA recommendations related to offsite infrastructure, identifying the vehicular grade separation alternative as preferred, and directing staff to work with the Port to identify which offsite projects will be led by the Port (Resolution No. 89045 C.M.S.).

In alignment with adopted City transportation plans and policies, as well as the aforementioned City Council direction related to the proposed Oakland Waterfront Ballpark District, staff have been working diligently to identify and secure funding for all TOWN projects. On staff's

recommendation, City Council has already taken the following actions to accept and appropriate funds for the TOWN projects:

- On December 18, 2017, City Council adopted Resolution No. [86994 C.M.S.](#), authorizing City staff to apply for, accept, and appropriate funds under the state of California's Affordable Housing and Sustainable Communities Program, for bicycle improvements on Martin Luther King Jr. Way.
- On June 15, 2021, City Council adopted Resolution No. 88687 C.M.S., authorizing City staff to accept and appropriate \$14.2M in Active Transportation Program Funds for the 7th Street Connection Project, and Resolution No. 87789 C.M.S, providing as additional local match funds secured for the 7th Street Connection Project through the Highway Safety Improvement Program (Cycle 9).
- On February 15, 2022, City Council adopted Resolution No. 89039 C.M.S., authorizing City staff to accept and appropriate \$14.5M in Rebuilding America through Sustainability and Equity (RAISE) grant funds and identifying Measure BB funds as a local match, pending Alameda County Transportation Commission (ACTC) approval.

Measure BB, Alameda County's one-cent sales tax for transportation, approved by voters on November 4, 2014, and administered by ACTC, included funds specifically for planned improvements to the Broadway corridor through Oakland, identified in Measure BB's transportation expenditure plan as "Oakland Broadway Corridor Transit," and "College/Broadway Corridor Transit Priority." As noted above, these funds were previously identified as potential local match in Resolution No. 89039 C.M.S, which accepted and appropriated RAISE grant funds for multimodal improvements to the Broadway corridor.

As reported to City Council on March 2, 2022 and September 21, 2022, the 2021 State Budget Act allocated \$279,500,000 to the Port for improvements that facilitate enhanced freight and passenger access in and around the seaport and waterfront and to promote the efficient and safe movement of goods and people, referred to hereafter in this report as the "State Funding." Of those funds, \$259.5 million are expected to be available to support implementation of the TOWN projects.

The California State Transportation Agency (CalSTA) was designated by the Legislature to administer the State Funding. The funds are available for encumbrance until June 30, 2024, and available for spending until June 30, 2027. There are many lengthy steps that need to be completed to encumber these funds by the June 30, 2024 deadline and complete construction by June 30, 2027, to ensure these funds are fully expended and not forfeited.

The Board of Port Commissioners (Port Board) and CalSTA approved a Baseline Agreement on July 21, 2022 (**Attachment D**) that outlines the general terms and conditions of the State Funding and identifies the areas of investment to be supported by the State Funding. These programmatic categories are consistent with the 2021 State Budget Act and the specific infrastructure funding request submitted by the Port in collaboration with the City to secure this legislatively directed funding for TOWN and other Port-related projects. The investment categories include:

- 7th Street Grade Separation East (7SGSE): This project is anticipated to realign and reconstruct the existing railroad underpass and multi-use path along 7th Street between west of I- 880 and Maritime Street in the City, increase vertical and horizontal clearances

for trucks to current standards (including seismic and geometric standards), improve the shared pedestrian/bicycle pathway, and provide efficient multimodal landside access and infrastructure improvements to promote existing and anticipated Port operations. This project is being delivered by ACTC and will use \$20 million of the total funds, pending Port Board and CalSTA approval.

- West Oakland & Jack London Square Rail Safety Enhancement Project: This project would advance safety improvements on the rail corridor mainline tracks accessing the Port through the West Oakland/Jack London Square Districts of the City. The improvements may include upgrading at-grade rail crossings, constructing physical barriers at or near crossings, separating grades, and designing and/or constructing capital improvements to reduce freight delays, enhance passenger access, and/or increase the overall efficiency of goods movement within the Oakland seaport area & waterfront.
- Vehicular & Pedestrian Grade Separation Improvements: This project would advance potential grade separation improvements for trucks, cars, pedestrians, and/or bicycles at one or more rail crossings providing access to the Oakland seaport area & waterfront and enhance passenger access.
- Local Road, Intersection, and Congestion Management Improvements: This project would advance infrastructure improvements and programs to relieve congestion and reduce conflicts on local roadways that serve as major access routes for trucks, vehicles, pedestrians, and bicyclists accessing the Oakland seaport area & waterfront from the local highway and roadway network and nearby transit nodes.

Going forward, the Baseline Agreement requires Project Supplements that include more detailed project descriptions to be approved by the Port Board and CalSTA prior to the commencement of work. The City and Port collaborated on the first Project Supplement, which is in the final stages of review by CalSTA. This proposed Project Supplement will provide funds sufficient to complete 35% design for all TOWN projects. It is important to note that project funds are requested and awarded by task and accepting design funds does not obligate the Port or its subgrantees (such as the City) to construct the contemplated projects, whether using CalSTA funds or funds from other sources. Subsequent Project Supplements will be developed by the City and the Port for submission to CalSTA for its approval in order to release additional funds from the State grant.

The Baseline Agreement explicitly authorizes as an eligible expense, unless otherwise precluded by law, expenditures related to the Port's Maritime and Aviation Project Labor Agreement (MAPLA) and/or related project labor agreements that are applicable to projects covered by the Baseline Agreement at the time the work is performed.

ANALYSIS AND POLICY ALTERNATIVES

The proposed resolutions would provide for planning and implementation of the TOWN projects, contributing to the **Citywide priorities of responsive, trustworthy government, holistic community safety and vibrant, sustainable infrastructure**. These projects have been designed to maximize community benefit by starting with an equity impact analysis, drawing from existing plans (including community-led and Council-approved plans), and conducting extensive engagement as described in the *Public Outreach/Interest* section below. The TOWN

projects will improve safety and sustainability through infrastructure enhancements such as bulbouts, protected bicycle lanes, rail safety improvements that will drastically improve safety along the entire corridor, and transit only lanes, with multiple projects on high injury corridors. Finally, the projects will improve goods movement and reduce delays and truck idling and associated emissions impacting high priority equity communities.

The three sections below are organized to provide information regarding the three resolutions accompanying this staff report.

Grant Acceptance and Appropriation

In accordance with the direction set forth by City Council in July 2021, staff have successfully identified a number of funding sources to support the TOWN projects. Adoption of the proposed resolution will allow the City to accept and appropriate funding as follows:

- The Transit and Intercity Rail Project (TIRCP) grant program awarded \$10.7 million to several TOWN projects, including expansion of an existing bus layover facility on 2nd Street into an improved transit center, and improvements on 2nd Street, 8th Street and Clay Street that improve safety for people walking, biking and taking transit.

The improvements specific to the 8th Street corridor include adding pedestrian scale lighting, new street trees, bulbouts and intersection safety improvements, and wayfinding, and addressing sidewalk tripping hazards. Improvements to the 8th Street corridor will be coordinated with the Lake Merritt BART Station area access improvements, for which BART was also awarded TIRCP funds. Together, these improvements will support the approved Lake Merritt BART Transit-Oriented Development, including 557 residential units (233 of which will be affordable), nearly 520,000 square feet of commercial space, and a day care center.

The improvements on 2nd and Clay streets will create a new transit hub adjacent to the Ferry terminal and at the terminus of the Broadway transit only lanes. Improvements include expanded sidewalks, transit amenities including shelters and benches, intersection safety improvements, wayfinding, space for shared mobility, and a bicycle lane gap closure on 2nd street between Alice and Harrison Streets.

These improvements reduce greenhouse gas emissions, strengthen linkages between local, regional and intercity transit, support statewide goals around density and land use, and improve quality of life along Oakland's waterfront, Chinatown, and downtown neighborhoods. The TIRCP grant will fund 100% of the project costs and does not require any local matching funds.

- The Community Project Funding/Congressionally Directed Spending (CPFCDs) fund program awarded \$2 million, sponsored by United States Senator Alex Padilla, to the 7th Street Connection Project, which will close a critical gap in the City's bicycle network and reconnect West Oakland and Downtown with a safe and welcoming street for people walking, biking, and taking transit. The project reduces vehicle travel lanes and installs protected bicycle lanes, traffic signal upgrades, curb ramps, accessibility enhancements, transit boarding islands, pedestrian refuge islands, sidewalk repairs, and new carbon-capturing street trees. This project will recreate 7th Street with consideration for the most

vulnerable users and spur an increase in active transportation between West Oakland and Downtown.

- The RAISE grant program awarded \$14.5 million to complete improvements in support of various TOWN projects, including transit-only lanes on Broadway and bike lanes on Martin Luther King, Jr. Way. Approval of this resolution would:
 - Enable the City to access \$10.2 million in local match funding to support this project from Measure BB, pending final approval from the Alameda County Transportation Commission (ACTC); and
 - Correct an error in Resolution No. 89039 C.M.S., which appropriated RAISE funds to the incorrect fund type.

All of the projects included above have been incorporated into the City's Capital Improvement Program (CIP) and will benefit Oaklanders regardless of whether the proposed Oakland Waterfront Ballpark District proceeds.

Memorandum of Understanding with the Port

The Port and City have worked collaboratively to develop a Memorandum of Understanding (MOU) regarding the implementation of the CalSTA Baseline Agreement and future grants for improvements that facilitate enhanced freight and passenger access in and around the seaport and waterfront and to promote the efficient and safe movement of goods and people. The goals of the MOU are to:

1. Work cooperatively to secure additional grants and leverage the State funds. The proposed MOU would demonstrate to potential funders that the City and Port are aligned on the proposed use of the State funds, consistent with the 2021 State Budget Act and the Baseline Agreement, and optimize our mutual ability to leverage and secure additional sources to fully fund all planned improvements, including the TOWN projects described in **Attachment A**, and the Port's 7SGSE project. Minimize duplicative processes and delays. The State fund deadlines are rapidly approaching and set in statute, thereby requiring an act of the State legislature to amend them. If the Port and its subgrantees do not meet the grant deadlines and the deadlines associated with the State funds are not amended, the funds will likely be forfeited.
2. Develop processes for how to transfer funds between the City and Port pertaining to both the State funds and other potential future awards for these projects. As noted in the *Background/Legislative History* Section, City Council directed staff to work with the Port to determine which TOWN projects the Port might deliver. The Port and City continue to collaborate on determining which TOWN projects the Port will design and deliver. The MOU would allow for the flow of external funds (including both the State Funding, and other potential future funds) between the City and Port, depending on which agency is the project lead.
3. Establish other legal terms and provisions, including indemnification of the City and Port, the terms and termination processes of the MOU, and general provisions.

The MOU presented to City Council represents a year of close coordination and collaboration between the City and Port, and by extension the Port and CalSTA, to jointly deliver these critical

projects in and around the Port Area. This level of collaboration has been recognized by both parties as advantageous in elevating necessary coordination to improve Port operations, minimize community impacts, and improve safety and connectivity for all road users between high priority equity communities and the Jack London District waterfront. Both parties also recognize and appreciate that the partnership has and will continue to result in increased investment in Oakland's infrastructure. The proposed MOU would memorialize this partnership as the City and Port continue to work collaboratively through a multi-year process of project design and delivery.

Reimbursement Agreement with Union Pacific Railroad

Located in the Jack London District, Embarcadero West is a 1.5-mile-long public street with railroad tracks running down its center. Approximately 80 trains a day use this corridor for freight and passenger service operated by UPRR and Amtrak/Capitol Corridor, respectively. The railroad tracks lack consistent physical separation between motor vehicle travel lanes, pedestrians, bicyclists, and other modes. All modes share the same right-of-way in an unconventional condition that has existed for more than 150 years. The current configuration poses major safety concerns. Even at low speeds freight and passenger train collisions can result in life-altering injuries or death. While injury-related collisions are uncommon, even minor incidents can shut down railroad operations and create significant financial and operational inefficiencies within the Port and for passenger rail.

The delivery of improvements to the Embarcadero West Rail Corridor as part of the TOWN projects will significantly enhance safety and operational conditions and will accelerate implementation of the ACTC's Rail Safety Enhancement Plan, which will, over time, improve existing at-grade railroad crossings throughout Alameda County. The improvements to the Embarcadero West Rail Corridor require the review and participation of the UPRR and CPUC. UPRR requires reimbursement of one hundred percent of costs associated with their review of the proposed improvements, on a time and materials basis. The reimbursement agreement (**Attachment E**) notes that the City shall reimburse UPRR for costs incurred. UPRR estimates such cost to total \$900,000. Costs are anticipated to be reimbursed by the State Funding and are included in the first Project Supplement submitted by the Port to CalSTA. The UPRR reimbursement agreement would be executed only upon the prior execution of both the MOU and the first Project Supplement, ensuring the availability of State Funding to reimburse the City for these costs.

The Reimbursement Agreement includes the following key tasks:

- Field diagnostic(s) and inspections
- Plan, specification, and construction review of the Embarcadero Corridor Safety Improvements
- Meetings and travel

The City cannot implement the proposed improvements in the Embarcadero Rail Corridor without the prior review of UPRR and the CPUC. This agreement enables that review by UPRR. Entering into the reimbursement agreement with UPRR will facilitate the installation of vibrant, sustainable infrastructure that provide safety benefits to people traveling on City streets, while meeting the railroad's operational needs.

FISCAL IMPACT

Grant funding for the TOWN projects described in this report will be accepted and appropriated as follows:

- For the projects awarded funding under the Transit and Intercity Capital Rail Program, \$10,732,000 into project and fund numbers to be determined;
- For the 7th Street Connection Project, \$2,000,000 will be deposited and appropriated in a project and fund to be determined;
- For the Broadway Streetscape Project partially funded by the RAISE grant, up to \$10,200,000 will be deposited in a project and fund to be determined; and
- For the RAISE grant of \$14,507,075, this item amends Resolution No. 89039 C.M.S. to correctly appropriate the RAISE grant to the Department of Transportation, Fund 2116, instead of Miscellaneous Grants, Fund 2999.

Acceptance and appropriation of the State Funding and the other grant funds as described in the MOU and this Agenda Report imposes no obligation on the City's General Purpose Fund and requires no allocation of Measure KK or other City matching funds. The reimbursement agreement with UPRR will not be executed until the relevant Project Supplement and the MOU have been finalized and executed, ensuring the availability of State Funding to reimburse these costs. All of staff's recommended actions are wholly consistent with the City Council's July 2021 direction to "make every reasonable effort to protect the City's General Fund." Failure to act on the proposed MOU, conversely, could result in the forfeiture of over one-quarter billion dollars of State Funding, as the deadlines to encumber and expend the State Funding are quickly approaching.

PUBLIC OUTREACH / INTEREST

The TOWN projects, once delivered, will bring to fruition longstanding community plans, including priorities and recommendations from Let's Bike Oakland (2019), the Draft Downtown Oakland Specific Plan (DOSP) (2019), the Lake Merritt Station Area Plan (2014), and the West Oakland Specific Plan (2014).

Building upon prior planning efforts, the public was engaged in the conceptual development of the TOWN projects in 2019 and 2020 through "on the ground" surveys that reached hundreds of Oaklanders in high priority neighborhoods adjacent to the waterfront, a series of community workshops, and stakeholder meetings as summarized here:

- In-person engagement included surveys, community meetings, and stakeholder meetings focused on West Oakland, Jack London Square and Chinatown. Over 500 surveys were conducted in English, Spanish, and Chinese, and happened on-board buses, at transit hubs, and on high-traffic corridors for a total of over 200 hours on the ground. In addition to in-person surveys, online surveys were also advertised to Oaklanders with a specific focus on the 94607 zip code (including West Oakland, Old Oakland, Chinatown, and Jack London Square). The people who took the surveys, according to the demographic questions, were representative of the City's demographics.

- Four community meetings with about 30 attendees each were held in the neighborhoods of focus, including West Oakland, Jack London Square, Chinatown, and a maritime stakeholder-specific workshop.
- Ten key stakeholder meetings were held with leaders of each community where TOWN projects are proposed to be implemented, and with transportation advocates.
- Staff made multiple presentations to the Bicyclist and Pedestrian Advisory Commission.

These engagement efforts provided multiple opportunities and forums for the public to learn about the project, provide feedback to shape the proposed improvements, and ask questions directly of the project team. Feedback acquired from these efforts informed the ultimate suite of TOWN projects.

To keep stakeholders apprised of the City's continued efforts to advance the TOWN projects, hear feedback, and highlight opportunities for further engagement, staff most recently engaged with the Bicycle and Pedestrian Advisory Commission in October 2022, its Infrastructure Committee in February 2022, and the Mayor's Commission on Persons with Disabilities in November 2022, all through virtual, publicly-held meetings.

As the City continues to apply for and be awarded funds to advance the TOWN projects, staff will continue public engagement through the design phase to ensure the projects will provide safer, more sustainable and more equitable access to the waterfront for all Oaklanders. In addition, the proposed MOU and accompanying resolution will ensure that the City can use State Funding to conduct community and stakeholder engagement to refine the design of each TOWN project.

COORDINATION

Staff has coordinated with the City Administrator's Office, the City Attorney's Office, the Budget Bureau, and the Port to develop these proposals. Staff has also coordinated with funders at CalSTA, ACTC, Senator Padilla's Office, and the Federal Highway Administration of the United States Department of Transportation.

SUSTAINABLE OPPORTUNITIES

Economic: To design and deliver all the projects identified in TOWN, which will provide many prevailing wage construction jobs and promote local and regional economic development. Staff are working to attract additional competitive grant funding. Securing, accepting, and appropriating competitive grant funding is a critical need for the TOWN projects, consistent with the City Council's direction to protect the City's General Fund. Adopting the resolutions accompanying this staff report will unlock approximately \$300 million in new, external investment in Oakland's infrastructure, without requiring use of the City's General Purpose Fund or limited Measure KK funds.

Implementation of the TOWN projects will increase safe, sustainable access to essential destinations like businesses, schools, and neighborhood resources for Oaklanders, while particularly benefitting low-income Oaklanders, Oaklanders with disabilities, and Oaklanders in Chinatown, West Oakland, Downtown Oakland, and the Jack London District. For example,

improved bus operations, new bus stop improvements, and expanded fiber connectivity to coordinate transit signal priority will help AC Transit accelerate recovery from the financial and ridership impacts of COVID-19, reduce the cost burden of commuting by making existing high frequency bus service more reliable, and therefore will make commuting by transit a more viable alternative to owning, maintaining, and operating a private vehicle. The delivery of the TOWN projects will also encourage economic development at the seaport by improving efficient access to the Port area; and support local enterprises and the long-term creation of good paying jobs for Oaklanders through local contracting provisions like Oakland's Local and Small Business Enterprise Program.

Execution of the UPRR Agreement will facilitate safety improvements for all existing and future road and rail users. Additionally, execution of the UPRR Agreement is a critical first step to begin the process of designing and implementing the Embarcadero Corridor Safety project, key to protecting and enhancing freight goods movement in and out of the nearby Port. The Oakland Seaport, the fourth largest port on the West Coast, oversees 1,300 acres of maritime-related facilities, serving a local market of over 14.5 million consumers, 34 million within a seven-hour drive, and 50% of the US population by rail.

Environmental: The projects identified in TOWN, including 1.4 miles of new transit-only lanes and 10 miles of new sidewalks, bike lanes and trails connecting the greater Downtown and West Oakland to the waterfront, help to achieve the City's vehicle trip reduction and emissions goals by encouraging walking, biking and transit.

The freight-related improvements in TOWN will minimize truck queues and associated idling. Vehicle emissions, including diesel particulate matter generated by drayage trucks, produce harmful greenhouse gases, and negatively impact local air quality. Reducing vehicle idling by promoting efficient vehicular circulation can reduce adverse environmental impacts.

Race & Equity: The TOWN projects underwent a racial equity impact assessment to identify the projects most effective at reducing existing transportation disparities between the surrounding neighborhoods and more affluent neighborhoods in Oakland.

The TOWN projects address inequities in transportation infrastructure across several diverse Oakland communities. The environmental, economic, and social impacts of surrounding freeways (I-880, I-980), industrial tenants, and the Port have disproportionately affected the health of nearby communities in West Oakland, Chinatown and Downtown. This project directs investment towards historically underserved Black residents in West Oakland and senior Asian residents in Chinatown, while also benefiting Oaklanders who live, work, and recreate in the Jack London District, Old Oakland, Downtown, and Uptown. These investments will redress past harm by reconnecting neighborhoods and communities that have been disconnected from one another and the waterfront by physical barriers such as freeways, provide more equitable, affordable transportation choices, and improve access for people with disabilities. Together, these changes will mitigate neighborhood bifurcation and increase connectivity to essential destinations, jobs, community, and other opportunities that enhance quality of life, including access to the waterfront.

The approval of the draft resolutions would help advance projects that meet these goals without impacting staffing for other critical transportation capital improvement projects due to City

Council's establishment of a new Major Projects Division on March 1, 2022 (Resolution 89059 C.M.S.).

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Activities proposed by this action are not "projects" as defined by the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(4) and (5), as they involve government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant impact on the environment, and it is also an organizational or administrative activity of government that will not result in direct or indirect physical changes to the environment. Thus, the activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

Prior to undertaking the activities for which the State Funding and other grants are being sought, the City, as lead agency, must perform, complete, and certify the adequacy of the environmental review in accordance with CEQA. The City, as lead agency under CEQA, prepared and certified an environmental impact report for the proposed Oakland Waterfront Ballpark District Project that may cover future actions by the City to be funded by the State Funding and grants described in this report. Furthermore, some of these future actions may be exempt from environmental review under CEQA and/or the National Environmental Protection Act (NEPA). The City will conform to state and federal statutes, regulations, and procedures, as required by CEQA and/or NEPA.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That the City Council:

1. Adopt a Resolution Authorizing The City Administrator To:
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For questions regarding this report, please contact Nicole Ferrara, Major Projects Division Manager, at 510-238-4720.

Respectfully submitted,



FRED KELLEY
Director, Department of Transportation

Reviewed by:

Ariel Espiritu Santo, Assistant Director

Prepared by:

Nicole Ferrara, Major Projects Division
Manager

Attachments (5):

Attachment A: TOWN Projects Overview

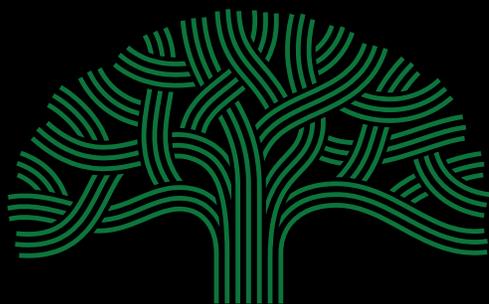
Attachment B: Matrix of Overlap between TOWN Projects and City Plans & Policies

Attachment C: Racial Equity Impact Analysis of the Oakland Waterfront Ballpark District
Transportation Plan

Attachment D: CalSTA and Port Baseline Agreement

Attachment E: UPRR Reimbursement Agreement

TOWN



Transforming Oakland's Waterfront Neighborhoods



WELCOME

Frequently Asked Questions
Transit & Active Transportation
Rail Safety & Goods Movement
Parking & Traffic Management



TOWN - Transforming Oakland's Waterfront Neighborhoods

The **TOWN** projects are a **comprehensive package of transportation infrastructure improvements** that will provide **safer, more sustainable and more equitable access** between Downtown, Chinatown, and West Oakland, and the waterfront while **protecting and enhancing goods movement** in and out of the nearby **Port of Oakland** (Port).



Active Transportation & Transit

1.4 miles of **new transit-only lanes** and **10 miles** of new **sidewalks, bike lanes** and **trails** connecting the greater downtown, Chinatown and West Oakland to the waterfront to encourage walking, biking, and transit.



Rail Safety & Goods Movement

Rail corridor and **roadway improvements** to help efficiently move trucks and cargo in and out of the Port of Oakland, reduce traffic congestion and truck idling, and improve traffic safety for all.



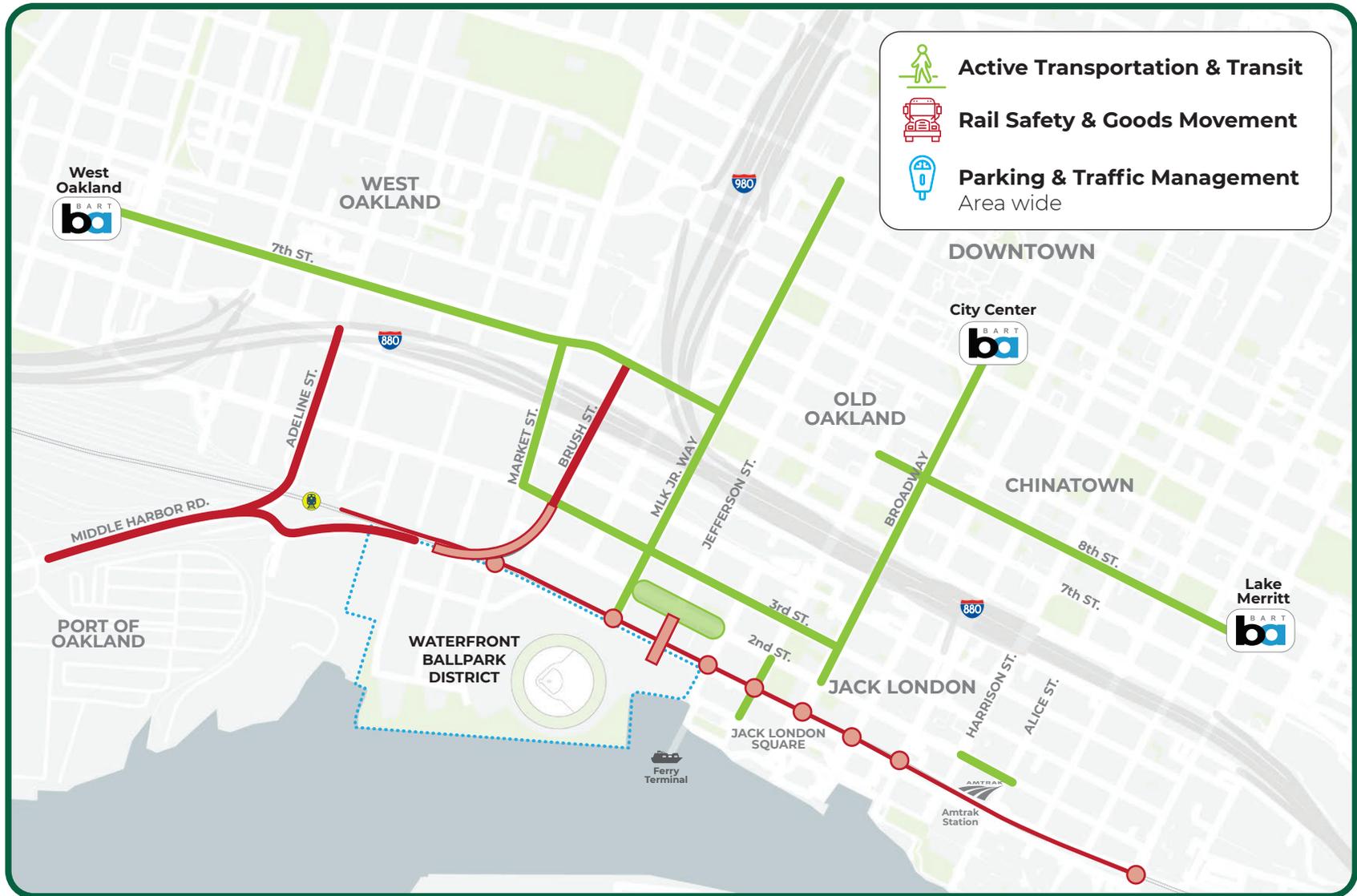
Parking & Traffic Management

Comprehensive suite of **parking system upgrades** and **intersection improvements** to manage on- and off-street parking and traffic.

These projects **implement longstanding transportation plans, policies and priorities** for the City of Oakland, and are estimated to **cost approximately \$500 million**. Over **half of those funds** have **already been secured** from State, regional and Federal sources, and fundraising efforts are ongoing to secure external grants to provide the last dollars needed to implement these transformative projects.

These improvements will create a **more connected Oakland**. **Stronger, safer, and more pedestrian-, cyclist- and transit-friendly connections** are needed to remove the barriers that have historically separated Oaklanders from their waterfront.

TOWN PROJECT MAP



FREQUENTLY ASKED QUESTIONS

Won't TOWN just support the Ballpark?

No. These improvements **align** with longstanding **City goals** to provide **safer**, more **sustainable, and more equitable access to transportation** by implementing established local and regional transportation plans, policies, and priorities.

Once delivered, these **projects** and strategies will support increased **access to transit**, a **safer** and more protected **experience for pedestrians and bicyclists**, more **smartly managed parking** in the Downtown, increased **safety around and over the railroad**, and more **efficient movement to and from the Port**. Here are some examples of how existing communities will benefit:

- ◇ **7th Street from West Oakland BART to Martin Luther King, Jr. Way** will receive a lane reduction to calm traffic, pedestrian safety and walkability improvements, and a protected bike lane, implementing numerous plans that have called for these improvements.
- ◇ **Broadway** will receive extended transit lanes from Grand Avenue to 2nd Street making the bus more reliable along the critical mile of AC Transit's service with ripple effects along numerous routes, freeway underpass improvements to bridge the divide between Downtown, Chinatown and the Waterfront, and pedestrian safety improvements to address injuries and accessibility challenges on this high injury street.
- ◇ The **Embarcadero Rail Corridor** through Jack London Square will receive long-awaited safety improvements to separate trains from vehicles, pedestrians, and bicyclists through new fencing, a multi-use bicycle and pedestrian path, and simpler vehicle movements.

FREQUENTLY ASKED QUESTIONS

If it is approved, the projects **would also support** the proposed **Waterfront Ballpark District**, which is expected to generate up to about **26,000 trips per weekday** at full buildout, which include trips to and from the proposed housing, offices, and retail shops. These transportation infrastructure improvements are needed to ensure that District trips are largely made using sustainable modes that will minimize traffic and associated impacts for surrounding neighborhoods and uses – West Oakland, Old Oakland, Downtown, the Jack London District, Chinatown, and the Port – and that the **project can instead be an asset for Oaklanders** and the greater Bay Area region.

Were these projects informed by an equity impact analysis?

Yes. The projects underwent a **racial equity impact assessment** to identify the most effective projects that **aim to reduce existing transportation disparities** between the surrounding neighborhoods and more affluent neighborhoods in Oakland.

How are we planning to fund the projects?

City Council and the Mayor have committed to ensuring that **no City General Purpose Funds** will go towards funding the TOWN projects. City staff are aggressively **applying for local, regional, state, and federal grants** to continue to pay for the necessary work to design and construct the full package of **transformative transportation infrastructure improvements**.

FREQUENTLY ASKED QUESTIONS

Why is OakDOT applying for grants for this project and not others?

While the City is aggressively pursuing grant funding for delivery of the TOWN projects, the **City** is equally **committed to advancing projects elsewhere in the City** that are prioritized for implementation in the City Council's **approved Capital Improvement Program (CIP)**. The CIP uses community values and data-driven prioritization processes to prioritize capital investments and safety improvements, centered on promoting equitable outcomes.

Between 2017-2022, OakDOT has **applied for, and received**, more than **50 grants** with awards totaling approximately **\$85 million** to implement other critical transportation projects **throughout Oakland**.

Are the TOWN projects diverting resources from other areas across the City?

No. Staff time spent on TOWN projects is **funded by project developers and State and Federal grants**, thereby preserving resources to allocate to other priority projects. Additionally, with the establishment of a **new Major Projects Division**, new staff are being hired to focus exclusively on TOWN and other significant infrastructure projects, so that **existing staff** can **remain dedicated to ensuring that ongoing priorities** such as paving and traffic safety projects move forward in a timely manner.

FREQUENTLY ASKED QUESTIONS

Why did the City Council create the Major Projects Division in the City's Department of Transportation (OakDOT)?

To **achieve the development goals** of delivering the TOWN projects **without impacting other core priorities** within OakDOT, the City created a **new Major Projects Division** with up to **13 new full-time equivalent staff** to focus on advancing these **transportation infrastructure improvements**. These positions will be phased in over time as project funding from grants, State funds, developers, and/or additional sources of funding become available. The hiring of additional staff allows existing staff to focus their efforts exclusively on other priority projects across the City.

TOWN - PROJECT MAP

TOWN PROJECTS



TOWN - PROJECT DESCRIPTIONS



Improved Transit & Active Transportation

1

Broadway Transit Improvements

This project will provide **priority bus lanes** between 2nd and 11th Street, and 20th Street and Grand Avenue. These improvements will create separation between buses and other motor vehicles. It will also include **intersection improvements** and various **pedestrian improvements** such as improvements to the I-880 underpass, bus loading, landscaping, pedestrian-scale lighting, wayfinding signage, new signals, crosswalk improvements and bulb outs to increase both perceived and actual safety for people along Broadway.



TOWN - PROJECT DESCRIPTIONS

2

2nd Street Transit Hub & Bike Gap Closure Improvements

A **new transportation hub** on 2nd Street will serve the Project and the greater Jack London Square community. The hub is envisioned as an attractive experience where game day crowds and daily commuters may easily and comfortably wait for buses, access bike share, valet bike parking, scooters, and other types of mobility devices. The hub will be located between Martin Luther King Jr. Way and Clay Street, and the improvements made at this location will support the **bike and pedestrian bridge** at Jefferson. This project will also install a traffic signal on 2nd Street at Broadway, close the Class 2 bike lane gap on eastbound 2nd Street between Harrison and Alice Streets, and increase sidewalk width at the transit hub.



TOWN - PROJECT DESCRIPTIONS

3 Martin Luther King, Jr. Way Streetscape Improvements

Between **Embarcadero West and 8th Street**, this project will construct **buffered and protected bike lanes** that will separate people on bikes/scooters from motor vehicle traffic and include **improvements for pedestrians** at all intersections and railroad crossings. These improvements will increase the safety and visibility of pedestrians and **improve multimodal connectivity** between Downtown Oakland and the waterfront. By separating modes of travel and allocating more space to non-motorized travel, the project will prevent serious injuries and fatal traffic crashes. These new bike lanes will connect to buffered bike lanes under construction from 7th to 14th Streets.



TOWN - PROJECT DESCRIPTIONS

4 Market Streetscape Improvements

This project will **upgrade signal systems, upgrade pedestrian corridors, add railroad crossing improvements, enhance the underpass at the I-880, and maintain protected bike lanes** on Market Street between 3rd Street and 7th Street – a segment on the City’s High Injury Network.

5 Underpass & BART Wayfinding Improvements

This project includes **underpass improvements** that increase safety and comfort, help knit together the communities currently separated by the I-880 freeway and provide **enhanced access to the waterfront and parks** for nearby communities and BART stations. It will also include **wayfinding signage** to Downtown, Lake Merritt and West Oakland BART stations.



TOWN - PROJECT DESCRIPTIONS

6 7th Street Corridor Streetscape Improvements

This project will **enhance multimodal traffic safety** and support the **revitalization of 7th Street** in West Oakland between Mandela Parkway and Martin Luther King Jr. Way, including protected bike lanes, transit boarding islands, intersection safety and signal improvements, pedestrian improvements and sidewalk repairs, and new street trees.

7 3rd Street Corridor Improvements

Pedestrian improvements will be installed between Broadway and Market Street, including the filling of sidewalk gaps, all-way stops signs at Brush and Castro Streets, and maintaining minimum pedestrian paths of travel along the corridor.

8 Washington Street Improvements

Closes a bike lane gap between 2nd Street and Water Street, providing access to the Waterfront.

9 8th Street Improvements

Provides **sidewalk and pedestrian intersection improvements** along 8th Street, primarily in Chinatown, from Lake Merritt BART (Oak Street) to Washington Street.

TOWN - PROJECT DESCRIPTIONS



Rail Safety & Goods Movement

10

Vehicular Grade Separated Crossing & Brush St. Improvements

The project will construct a **vehicle overcrossing** over the Union Pacific Railroad tracks at the intersection of Brush Street (or Market Street) to Embarcadero West. This crossing would be the **primary** means of **vehicle access** to the **project site**. Without this crossing, vehicles would continue to crossing the active railroad tracks along Embarcadero West. Brush Street improvements includes **traffic signal and safety improvements** at all intersections between 3rd and 7th.

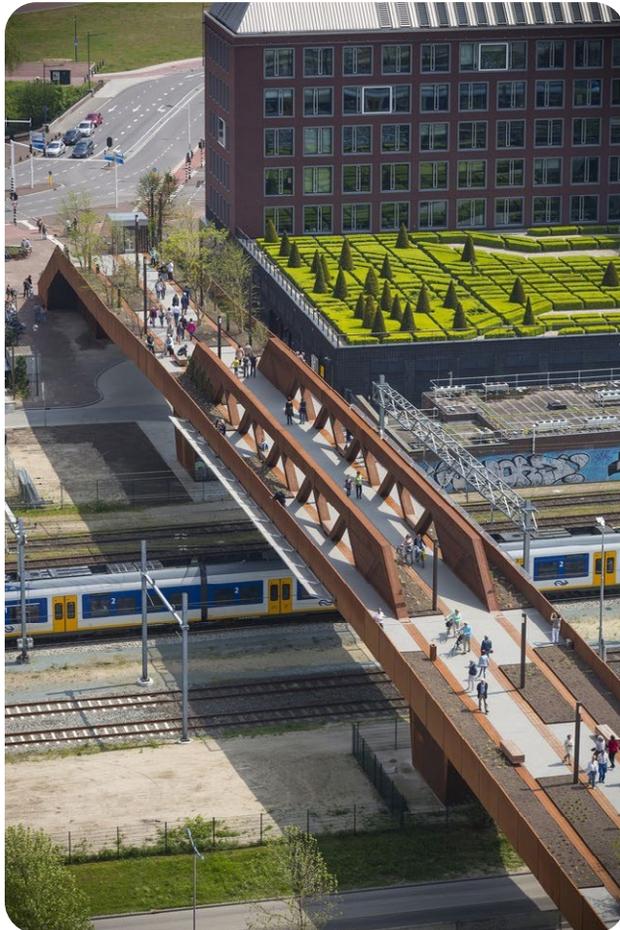


TOWN - PROJECT DESCRIPTIONS

11

Railroad Pedestrian and Bike Bridge Project

This project will **install** an **ADA-accessible overcrossing** over the **railroad tracks** at Jefferson Street (or Clay Street) to provide safe pedestrian and bicycle access to the waterfront, Jack London Square, the Ballpark District, and Bay Trail.



TOWN - PROJECT DESCRIPTIONS

12 Embarcadero Railroad Safety Project

This project will install **rail safety, pedestrian improvements, and “quiet zone” improvements**, including a **fence** along the tracks, consistent with Alameda County Transportation Commission’s 2018 “Grade Crossing Toolkit,” **new railroad gate arms** and **other intersection safety improvements** at at-grade crossings. This project will also increase pedestrian and emergency access between the Jack London District and the Jack London Square/waterfront by **installing a multi-use path**.



TOWN - PROJECT DESCRIPTIONS

13 Emergency Vehicle Access

This project will construct an **emergency vehicle access (EVA) route** that connects the west end of Embarcadero West to Middle Harbor Road at Adeline.

14 Adeline Streetscape Improvements

This enhanced goods movement project will provide **traffic signal upgrades** in order to improve safety within the City's High Injury Network. This project will include intersection and signal improvements at the I-880 off-ramp and Union Street, and at 5th Street at Union and Adeline Streets. **Adeline Street** will be **reconfigured** between 7th Street to the seaport to better **support truck movement** from the freeway.

TOWN - PROJECT DESCRIPTIONS



Parking & Traffic Management

16 Parking and Traffic Management

The **OakPark Parking Management Plan** accelerates the City of Oakland's parking efforts by rapidly **implementing adopted parking principles**. It includes the following key **strategies to manage traffic throughout the year** and during **event-day surges**, in the Downtown, Jack London Square, Chinatown and West Oakland areas: **(1)** expanding meters and dynamically pricing on-street parking to match demand, **(2)** expanding residential parking permits and using a first-of-its-kind equitable pricing approach, and **(3)** managing off-street parking in publicly accessible garages throughout the Downtown area, including a reservation system.



17 Crash Analysis Improvements - Brush at 17th & 18th, Castro/5th, MLK/17th

Intersection safety improvements such as traffic signal upgrades to enhance traffic safety for all modes will be made.

Visit the City of Oakland's website regularly for project information and updates:

www.oaklandca.gov

CITY OF
Oakland

Attachment B

Project #	Project Name	TOWN Projects: Overlap with City Priorities, Plans and Policies													
		2017 Pedestrian Plan, "Oakland Walks!"	2019 Oakland Bike Plan	West Oakland Truck Management Plan	AC Transit Service Expansion Plan	Lake Merritt Station Area Plan	West Oakland Specific Plan	West Oakland Community Action Plan	Draft Downtown Oakland Specific Plan (Aug. 2019)	Oakland-Alameda Access Project (ACTC)	High Injury Network	Priority Equity Neighborhood	Transportation Impact Fee (TIF) Investments	Capital Improvement Plan (CIP)	5YR Paving Plan
1	Broadway Transit Improvements	✓							✓	✓	✓	✓	✓	✓	
2	2nd Street Transit Hub & Bike Gap Closure Improvements		✓						✓		✓		✓	✓	
3	Martin Luther King, Jr. Way Streetscape Improvements		✓						✓			✓	✓	✓	
4	Market Streetscape Improvements		✓					✓	✓		✓	✓	✓	✓	
5	Underpass & BART Wayfinding Improvements								✓		✓	✓	✓	✓	
6	7th Street Corridor Streetscape Improvements		✓		✓		✓	✓	✓		✓	✓	✓	✓	
7	3rd Street Corridor Improvements						✓		✓		✓		✓	✓	
8	Washington Street Improvements		✓						✓				✓	✓	
9	8th Street Improvements	✓				✓			✓	✓	✓	✓	✓	✓	
10	Vehicular Grade Separated Crossing												✓	✓	
11	Railroad Pedestrian and Bike Bridge Project								✓				✓	✓	
12	Embarcadero Railroad Safety Project		✓				✓		✓		✓	✓	✓	✓	
13	Emergency Vehicle Access/Overweight Corridor												✓		
14	Adeline Streetscape Improvements			✓			✓			✓	✓	✓	✓	✓	
15	Brush Street Surface Improvements										✓		✓	✓	
16	Parking and Traffic Management						✓				✓	✓	✓	✓	
17	Crash Analysis Improvements:										✓	✓	✓	✓	

Racial Equity Impact Analysis

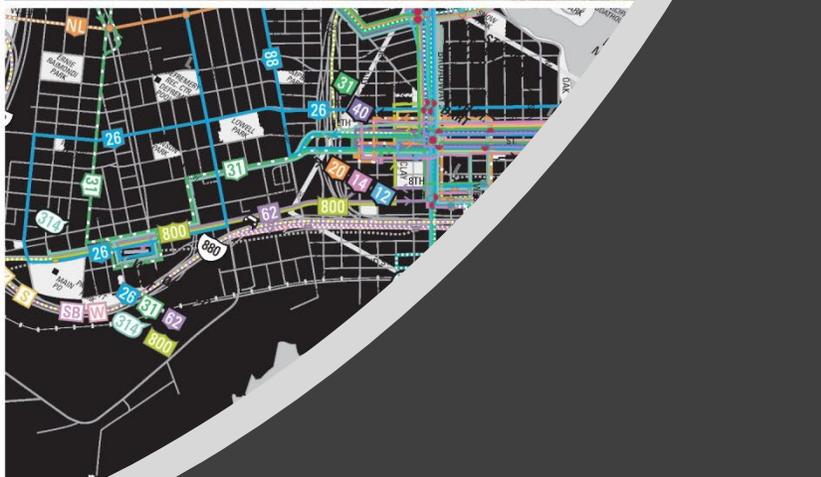
Oakland Waterfront Ballpark District Transportation Plan



Equity Impact Analysis Outline

1. Analysis Background
2. Study Area and Demographics
3. Transportation Disparities Analysis
4. Conclusions





Analysis Background

Background

- This analysis was initially completed in December 2019 as part of the development of the Oakland Waterfront Ballpark District's Transportation Plan consisting of up to 3,000 housing units, 35,000 seat ballpark, 3,500 seat performance venue, 1.7M sf of commercial space, and 18 acres of open space.
- This analysis was also informed by engagement related to the Transportation Plan, including:
 - Over 500 surveys that were distributed in-person and online. The surveys were conducted in English, Spanish, and Chinese (Cantonese and Mandarin). The people who took the surveys, according to the demographic questions on the surveys, were representative of the City demographics.
 - Four community meetings with about 30 attendees each were held in the neighborhoods of focus, including West Oakland, Jack London Square, Chinatown, and a maritime stakeholder-specific workshop.
 - Ten key stakeholder meetings were held with leaders of each community where TOWN projects are proposed to be implemented, and with transportation advocates.
- This analysis and engagement informed the development of the TOWN transportation projects



Oakland's Racial Equity Definition and Goals

- **Equity Definition:** Equity is fairness. It means that identity—such as race, ethnicity, gender, age, disability, sexual orientation or expression—has no detrimental effect on the distribution of resources, opportunities and outcomes for our City's residents.
 - Past decisions by institutions including the City have resulted in inequities seen today
- **Equity Goals:**
 - Improve efficiency and reliability, & reduce costs of getting around for disadvantaged populations
 - Improve health and safety, and close the gap on racial disparities in transportation access

Understanding disparities is a requisite to addressing them. If we understand disparate transportation-related investments and outcomes between Oakland communities, we can begin to reverse trends by designing and implementing equity-forward policies and programs

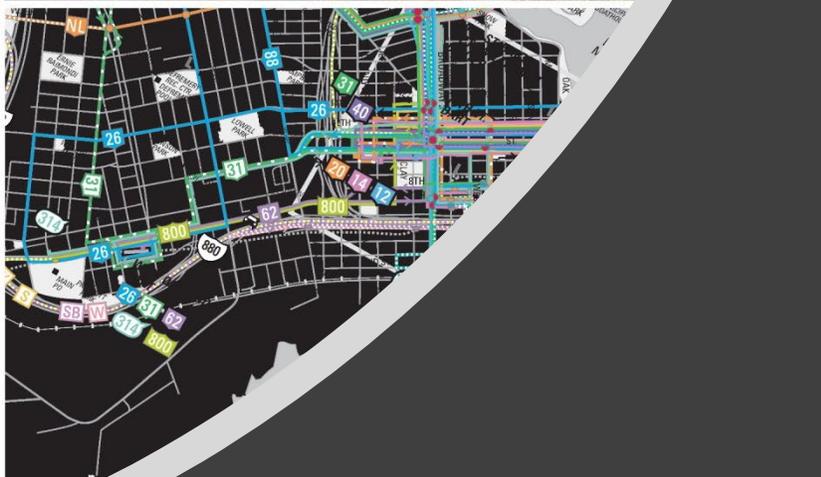


Race and Equity Working Assumptions

- **Race matters** - almost every indicator of well-being shows troubling disparities in outcomes by race
- Disparities are often created and maintained inadvertently through policies and practices that contain barriers to opportunity
- It's possible - and only possible, to close equity gaps by using strategies determined through an intentional focus on race
- If opportunities in all key areas of well-being are equitable, then equitable results will follow
- Given the right message, analysis, and tools, people will work toward racial equity

Source: RACE MATTERS Toolkit and the Annie E. Casey Foundation for researching and crafting this assumptions language

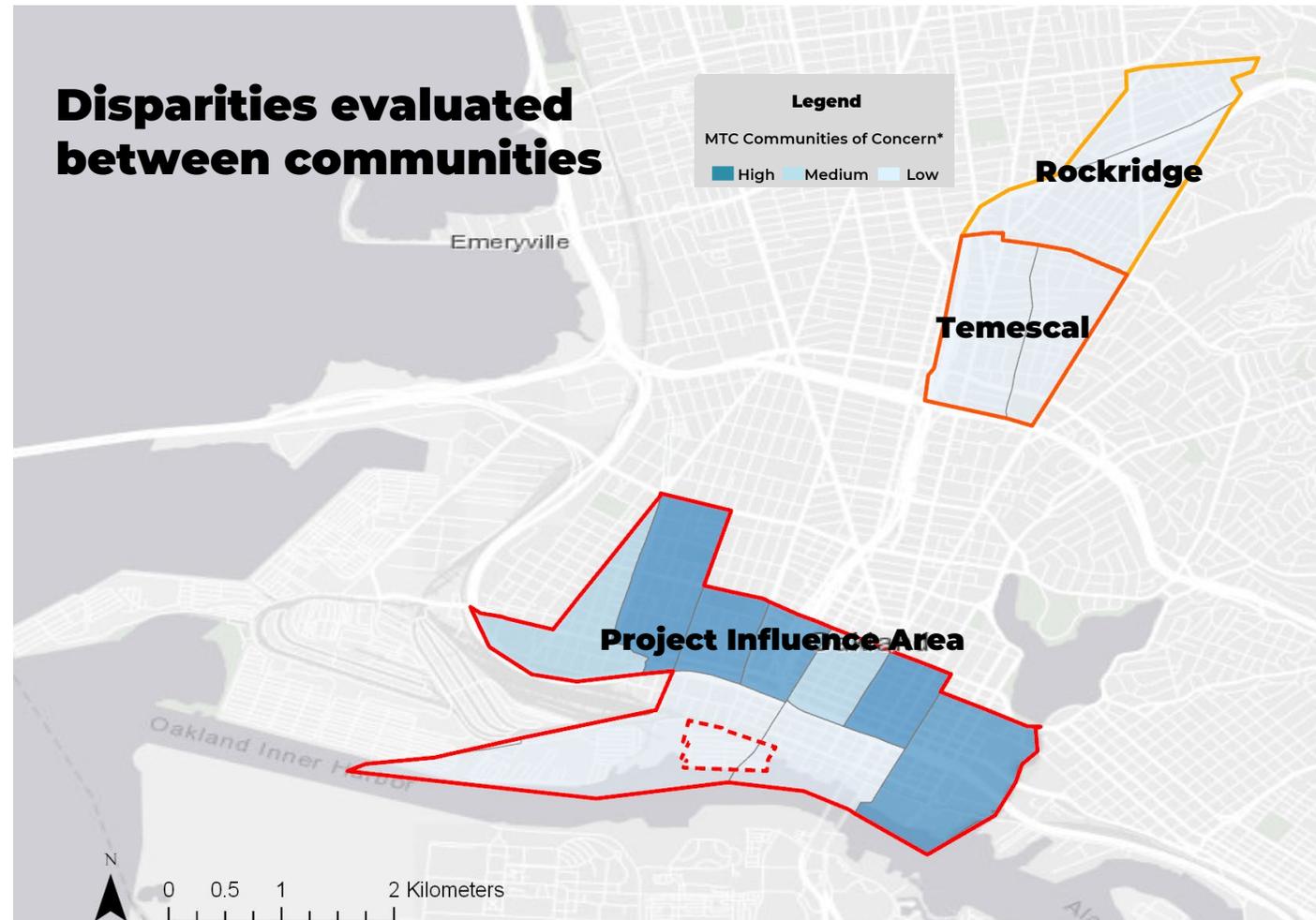




Study Area and Demographics

Study Area and Demographics

- Three sites were chosen to compare different demographic and land use contexts
- We seek to understand the transportation disparities in these areas



Study Area and Demographics

The Project Area has higher concentrations of disadvantaged populations

Legend

Communities of Concern (2016)

■ High ■ Medium ■ Low

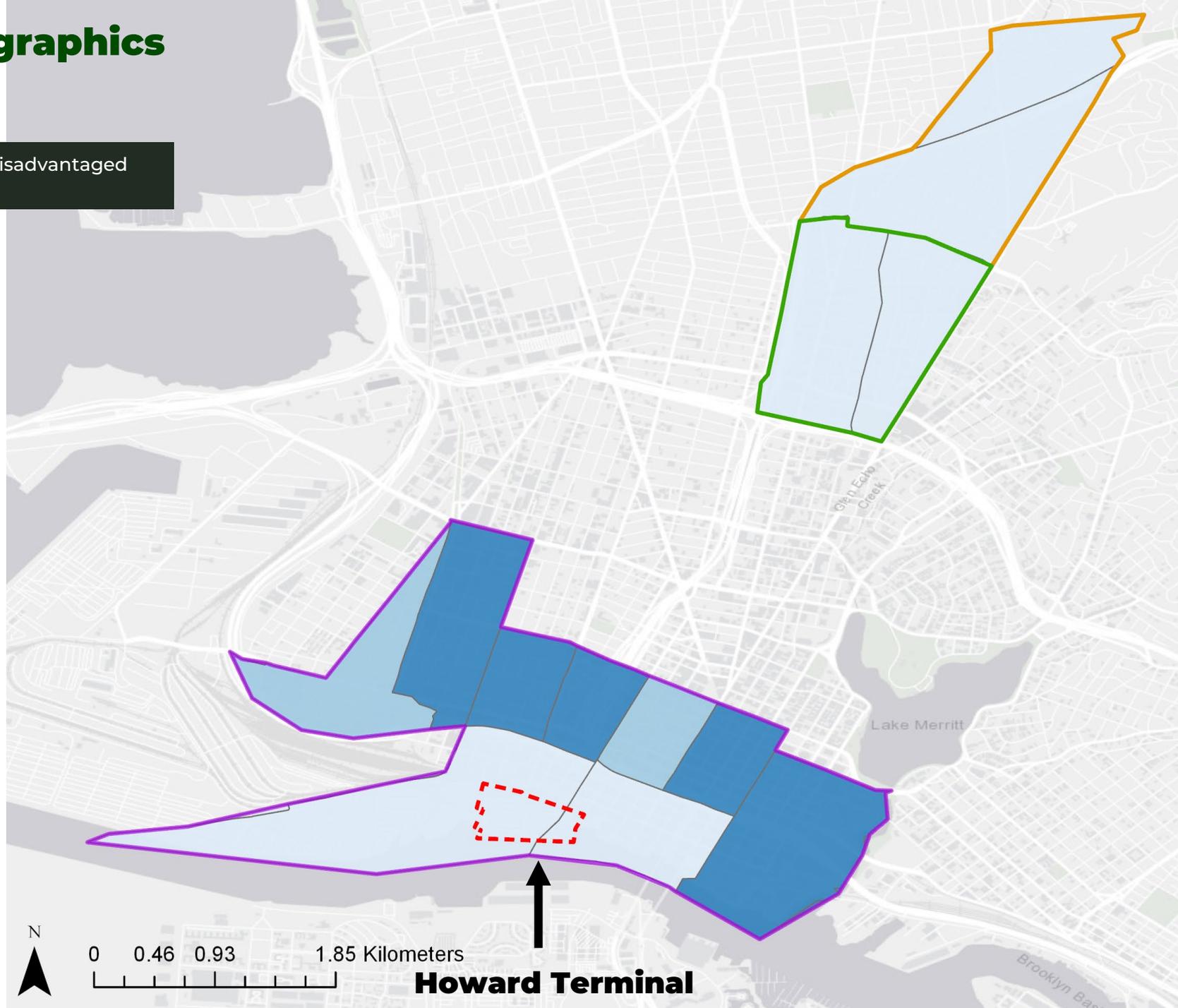
Project Impact Area ———

Temescal ———

Rockridge ———

Howard Terminal - - - -

Sources: Communities of Concern, OakDOT, Noel Pond-Danchik, 2018 - augmenting the data from MTC's Community of Concern (COC) measurement



Study Area and Demographics

The Project Area's residential zones are more interspersed with non-residential land-uses (industrial and commercial areas)

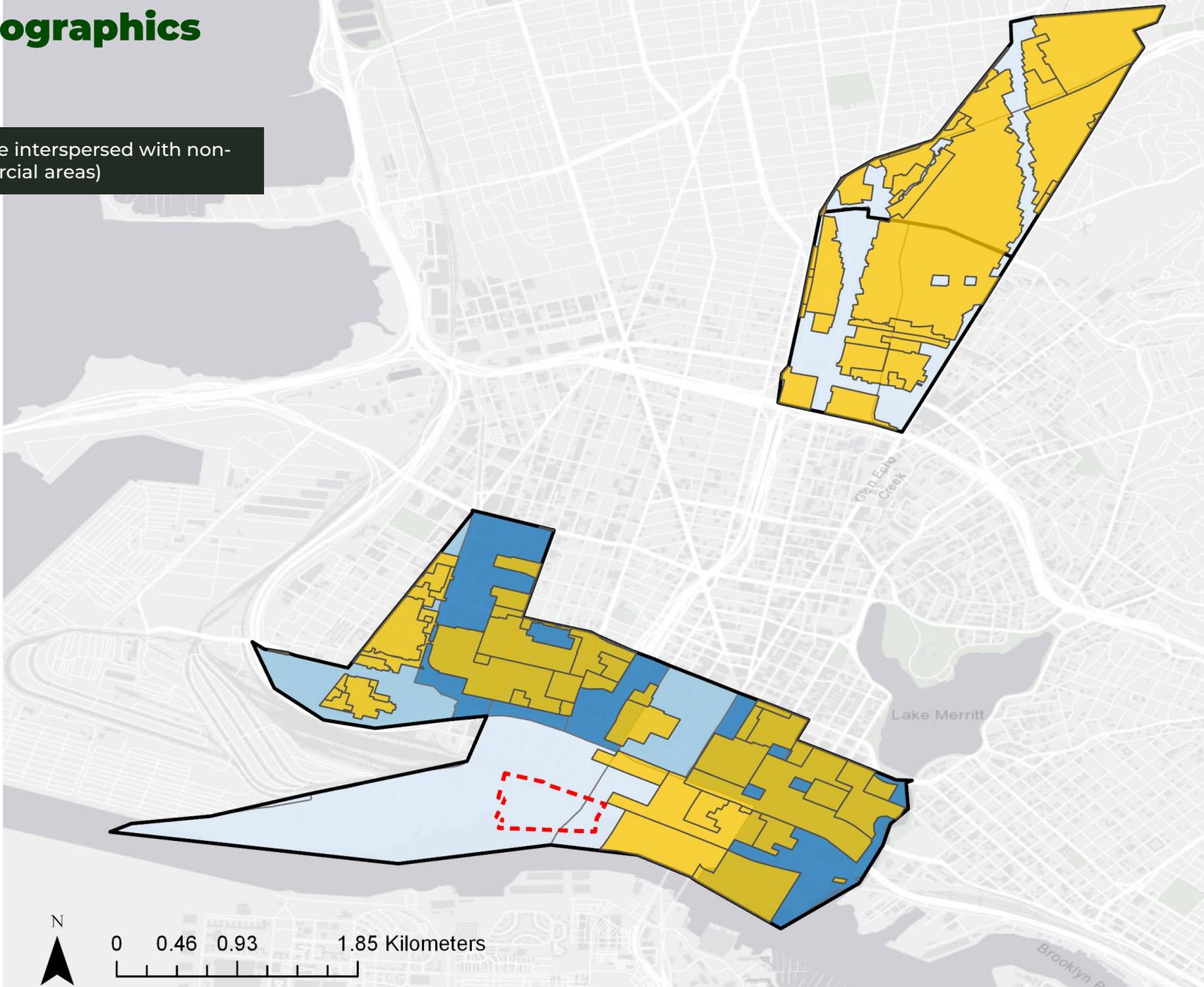
Legend

Communities of Concern (2016)

■ High ■ Medium ■ Low

Residential or Mixed Residential Zones ■

Howard Terminal - - -



Sources: Oakland Zoning - effective March 20, 2018 per Ordinance 87089. Communities of Concern, OakDOT, Noel Pond-Danchik, 2018 - augmenting the data from MTC's Community of Concern (COC) measurement

Study Area and Demographics

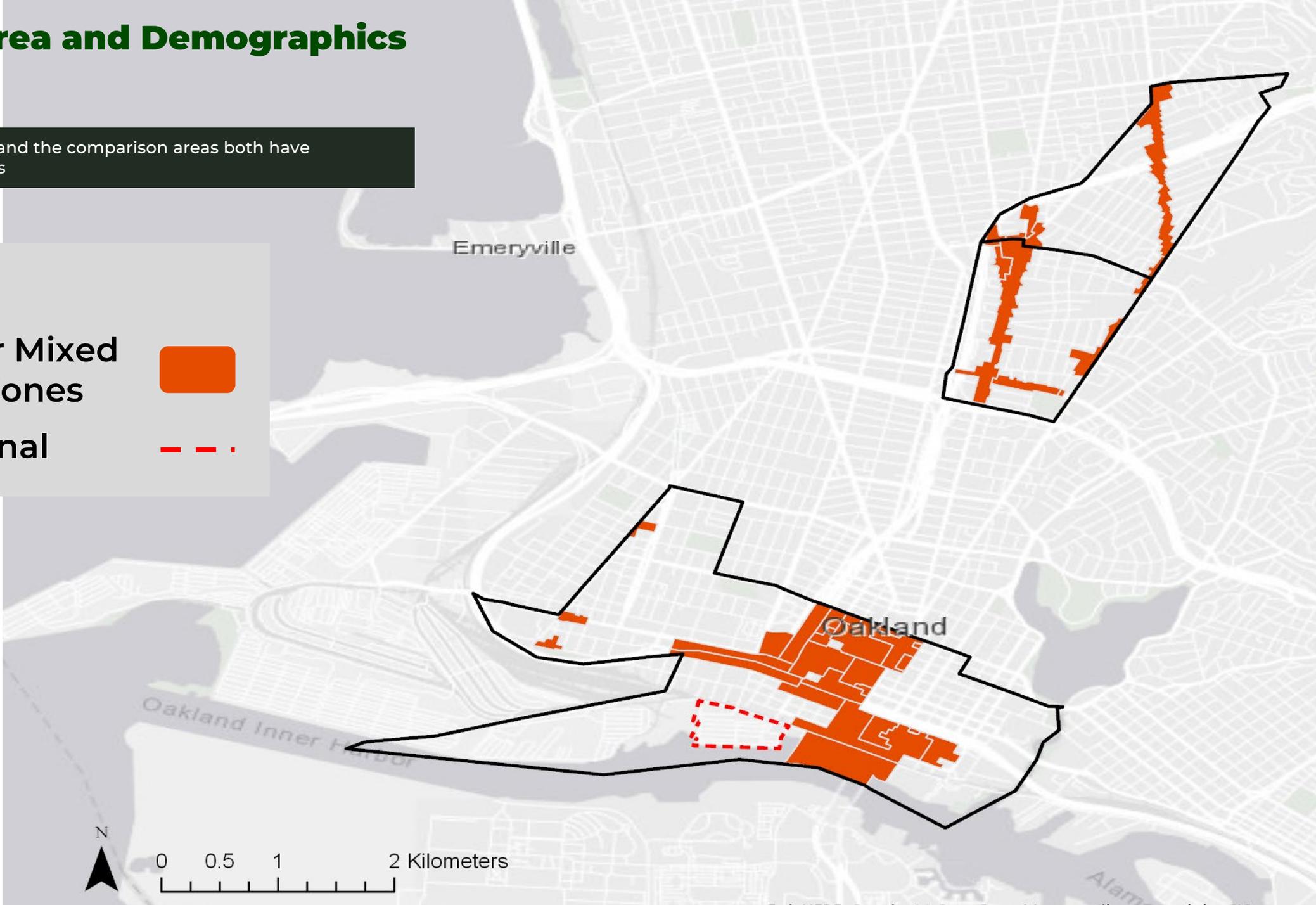
The Project Area and the comparison areas both have commercial zones

Legend

Commercial or Mixed Commercial Zones



Howard Terminal

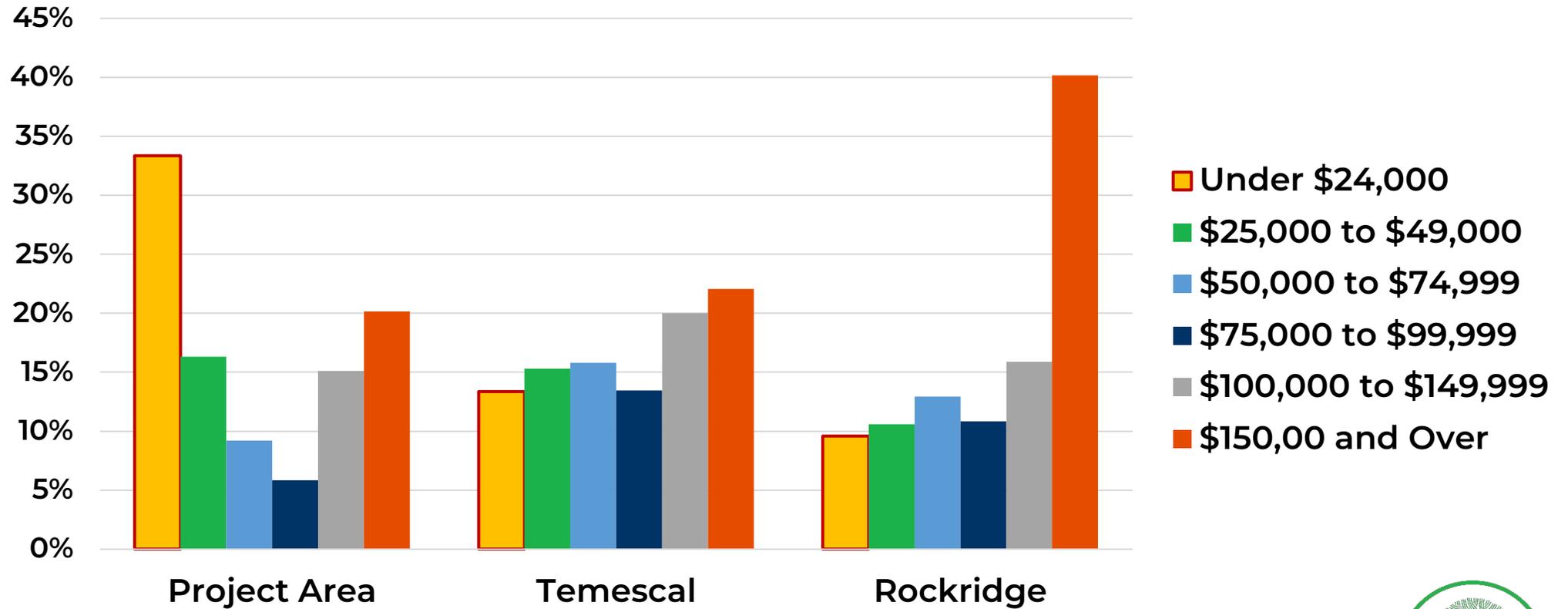


Sources: Oakland Zoning - effective March 20, 2018 per Ordinance 87089.

Study Area and Demographics

The Project Area has the most families making under \$25,000 a year

FAMILY INCOME

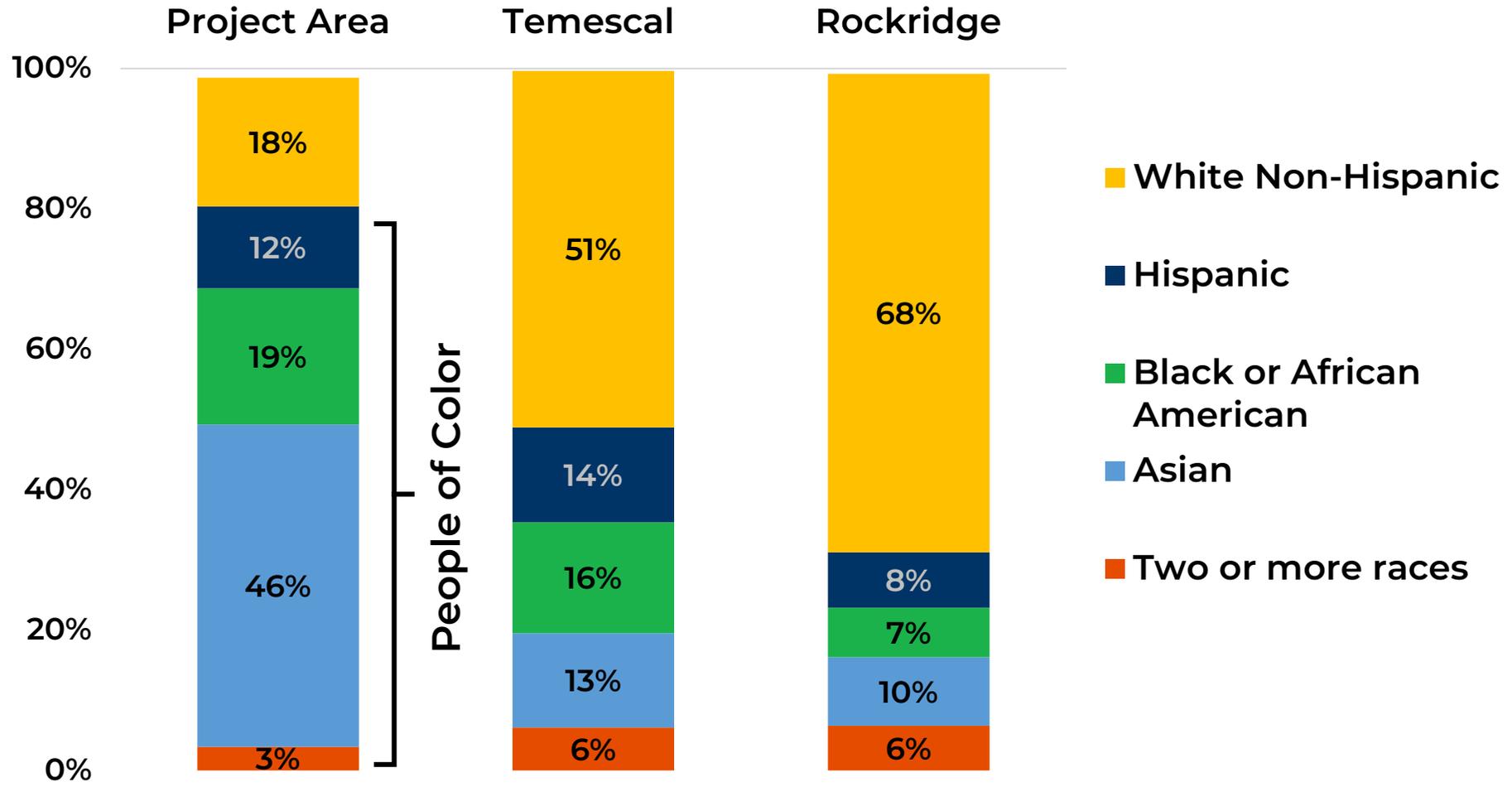


Source: INCOME IN THE PAST 12 MONTHS (IN 2017 INFLATION-ADJUSTED DOLLARS) 2013-2017
American Community Survey 5-Year Estimates



Study Area and Demographics

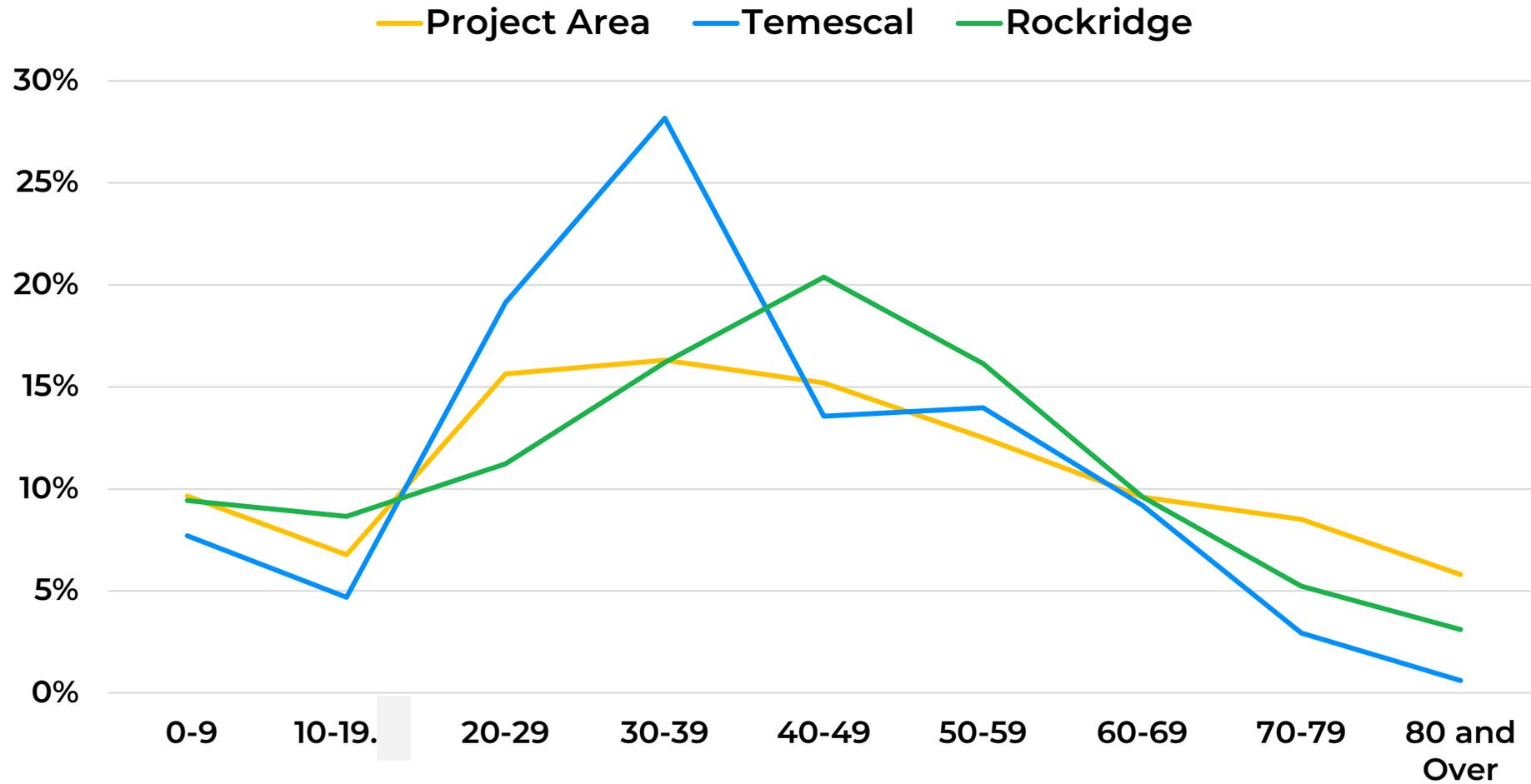
The Project Area has highest percent of people of color



Sources: U.S. Census Bureau (2016). B03002-Hispanic or Latino Origin by Race, 2011-2016, American Community Survey 5-year estimates. Universe: Total Population.*Note: Racial groups included comprise more than 5% of the overall population

Study Area and Demographics

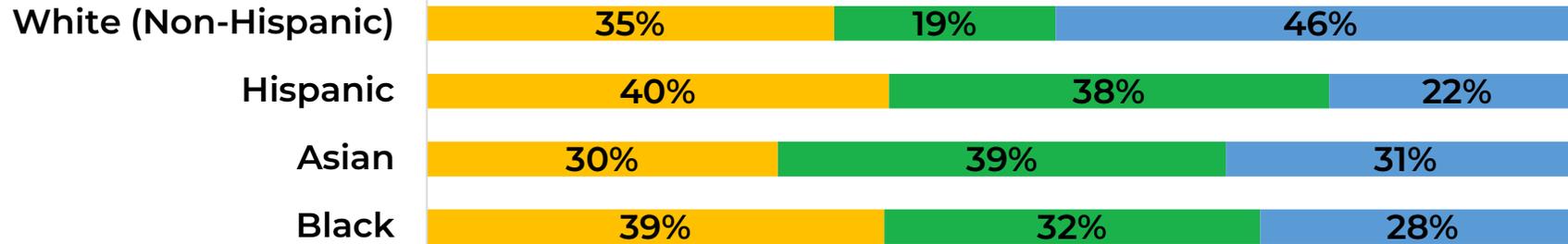
The Project Area has highest percent of seniors



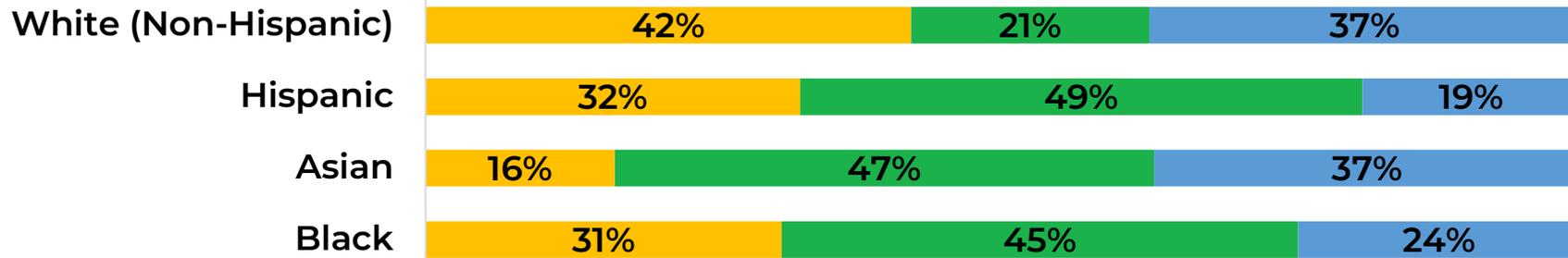
Public Transit - Racial Equity Analysis

■ Drove Alone ■ Carpooled ■ Public Transportation

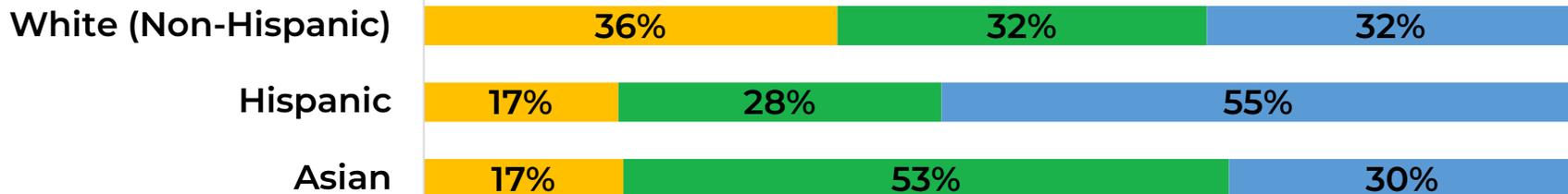
Project Area



Temescal



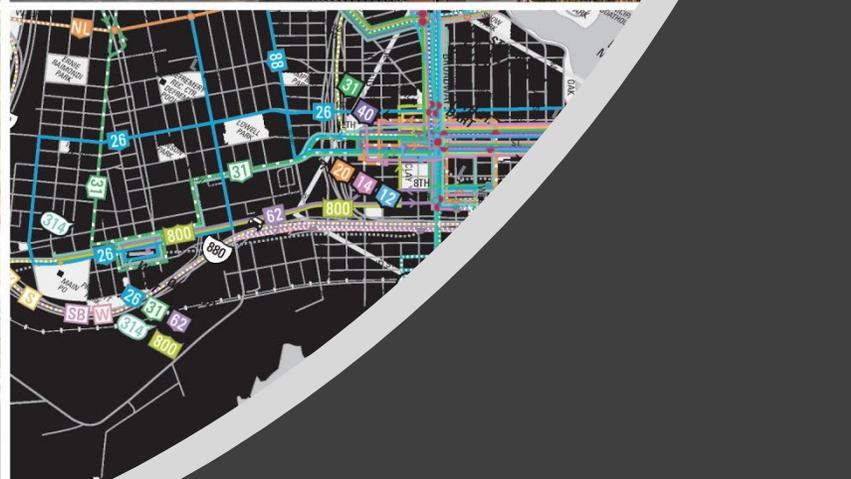
Rockridge



In the Project Area...

White residents use public transit more compared to White residents in Temescal and Rockridge

Asian, Hispanic, and Black residents drove alone the most when compared to those racial groups in Temescal and Rockridge



Transportation Disparities Analysis

What Does the Data Tell Us?

Disparities Exist in:

1. Safety
2. Transit Service and Use
3. Walking and Biking
4. Access to Transit Infrastructure
5. Parking and Traffic





Safety

Disparities for Road Users

Walking and biking to commute is less common than other ways of getting around but has a higher rate of fatal injury



People walking, biking, and taking public transit make up under **30%** of commute trips

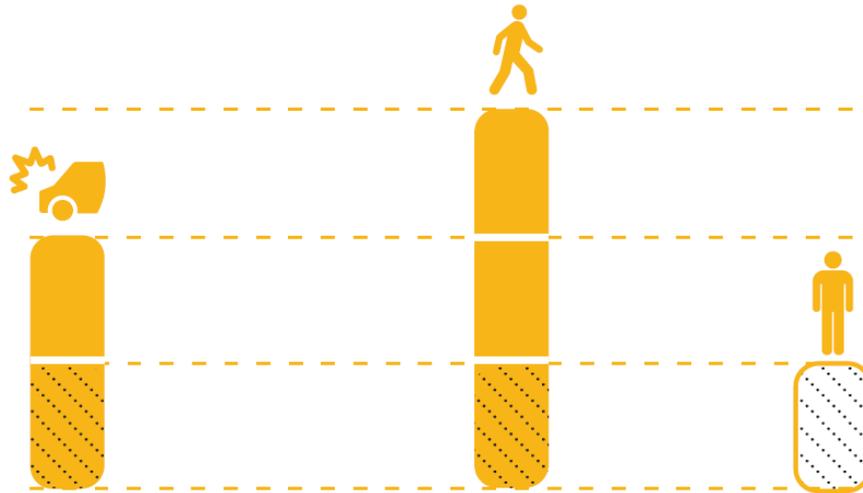


but experience nearly **50%** of **severe or fatal injuries**

Disparities for Road Users

Black Oaklanders are at greater risk of being killed or injured in collisions, especially while walking.

The most dangerous streets are disproportionately in predominantly Asian neighborhoods.



30% of streets in majority **Asian census tracts** fall on the City of Oakland Pedestrian High Injury Network - the highest percentage of any ethnicity ³

Black Oaklanders are

2 times as likely to be killed or severely injured in a crash (all modes)

and

3 times as likely to be killed or severely injured while **walking**

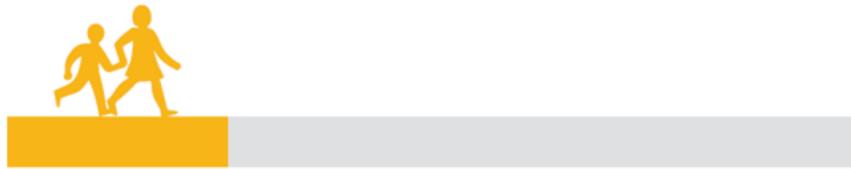
compared to all other Oaklanders

Disparities for Road Users

Seniors are at greater risk of being killed in a collision, especially while walking



67% of **Older Oaklanders' (65+)** fatalities occur while **walking**



compared to only **26%** for Oaklanders of all other ages



Older Oaklanders (65+) are more than **2 times** as likely to be killed in a crash compared to all other Oaklanders

Disparities for Road Users

There are thirteen high injury corridors and four intersections in the Project Area

Legend

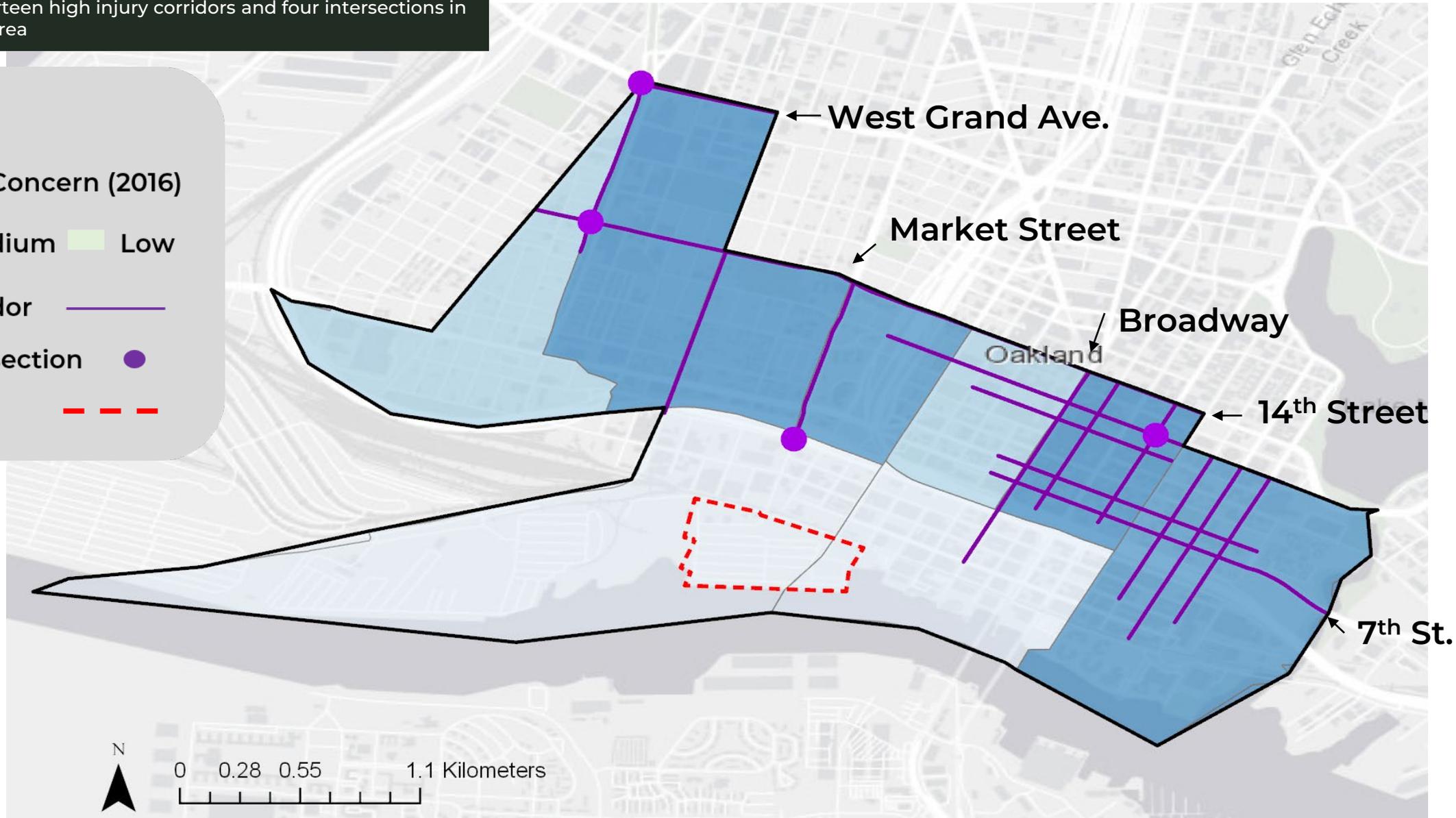
Communities of Concern (2016)

High Medium Low

High Injury Corridor

High Injury Intersection

Howard Terminal



Disparities for Road Users

Rockridge and Temescal have fewer high-injury corridors and intersections

Legend

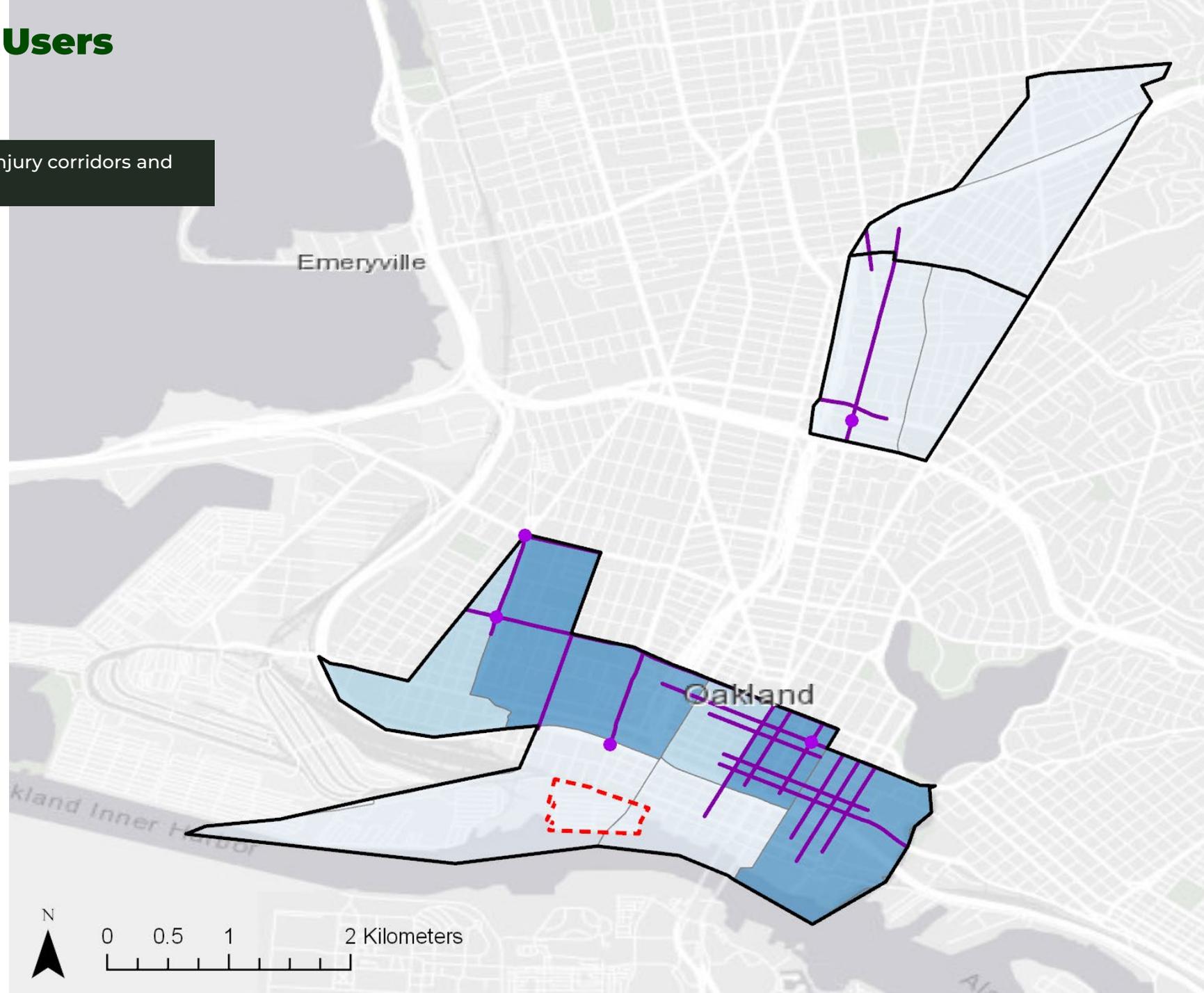
Communities of Concern (2016)

High Medium Low

High Injury Corridor

High Injury Intersection

Howard Terminal



Disparities for Road Users

Rockridge and Temescal have fewer deaths and injuries due to traffic collisions

Collisions – Deaths and Severe Injuries

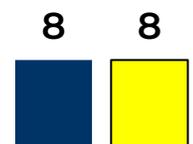
White (Non-Hispanic) 

People of Color 

Howard Terminal 

 People of Color  White (Non-Hispanic)

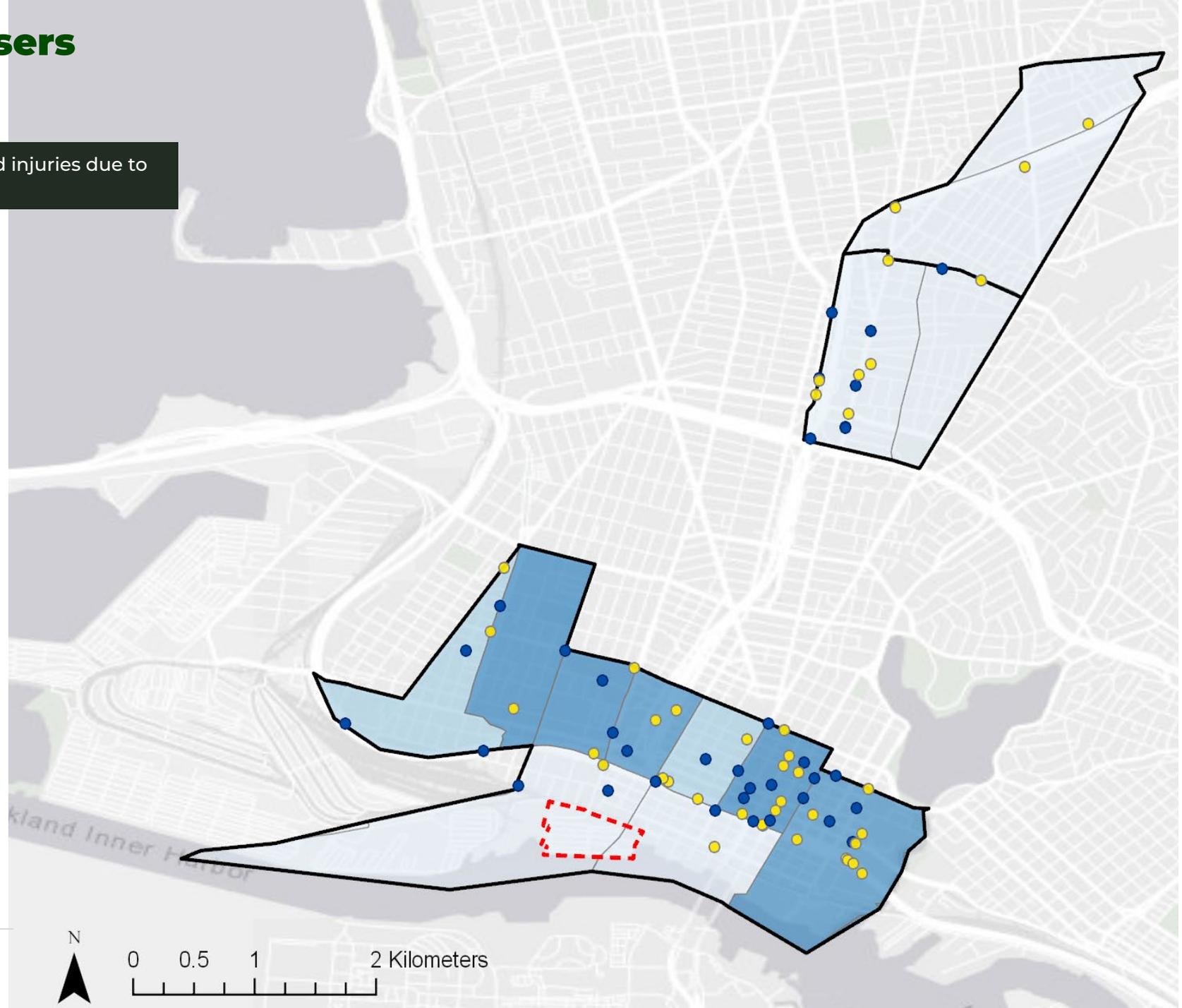
33 33



Temescal



Rockridge

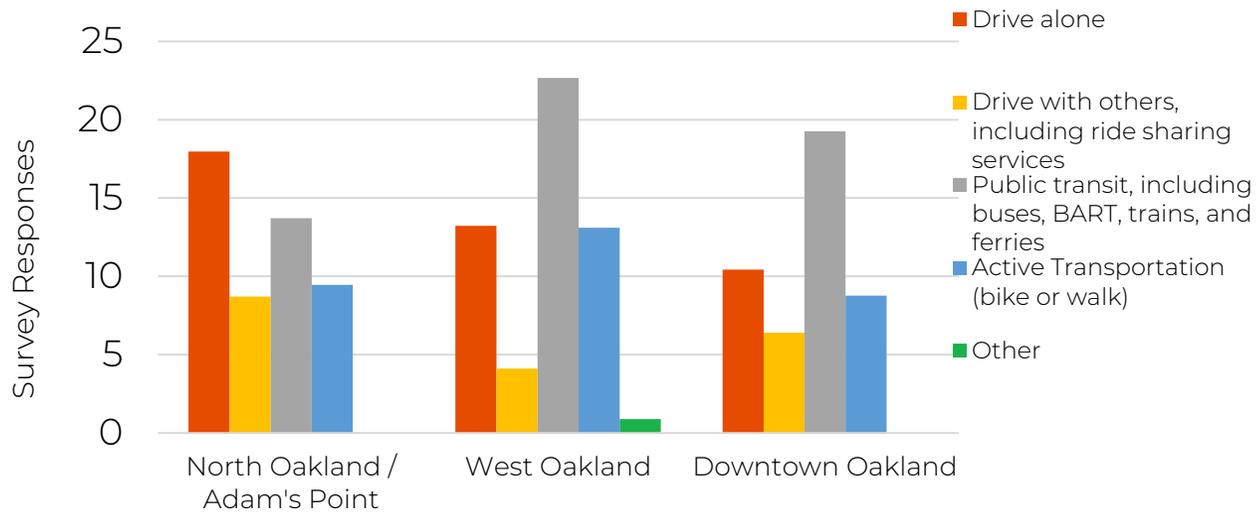




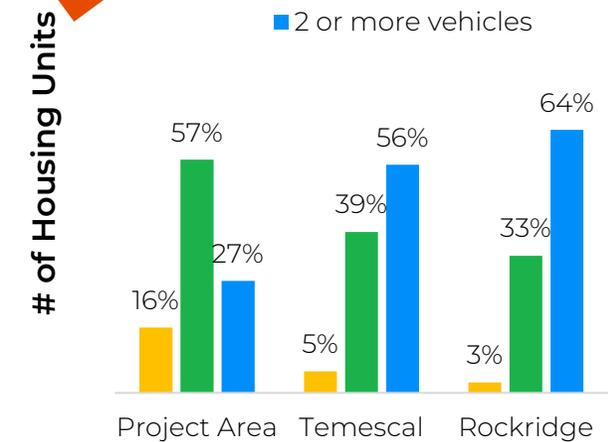
Public Transit

Public Transit - Racial Equity Analysis

PRIMARY MODE OF TRANSPORTATION: Public transit is the largest primary mode in West Oakland & Downtown

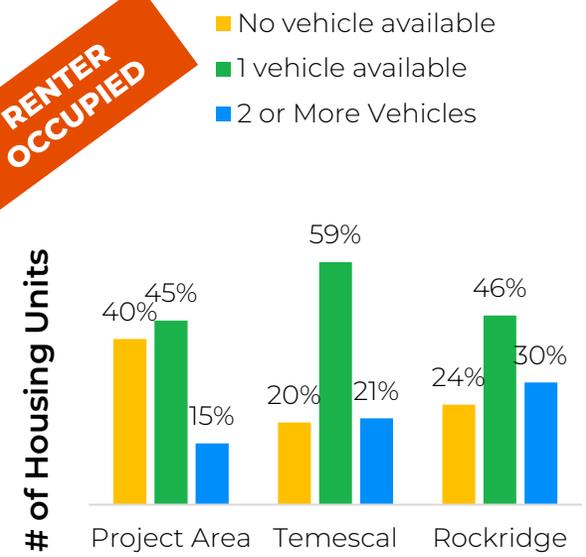


OWNER OCCUPIED



VEHICLE ACCESS: The Project Area has the most owner-occupied units with zero to one car available

RENTER OCCUPIED



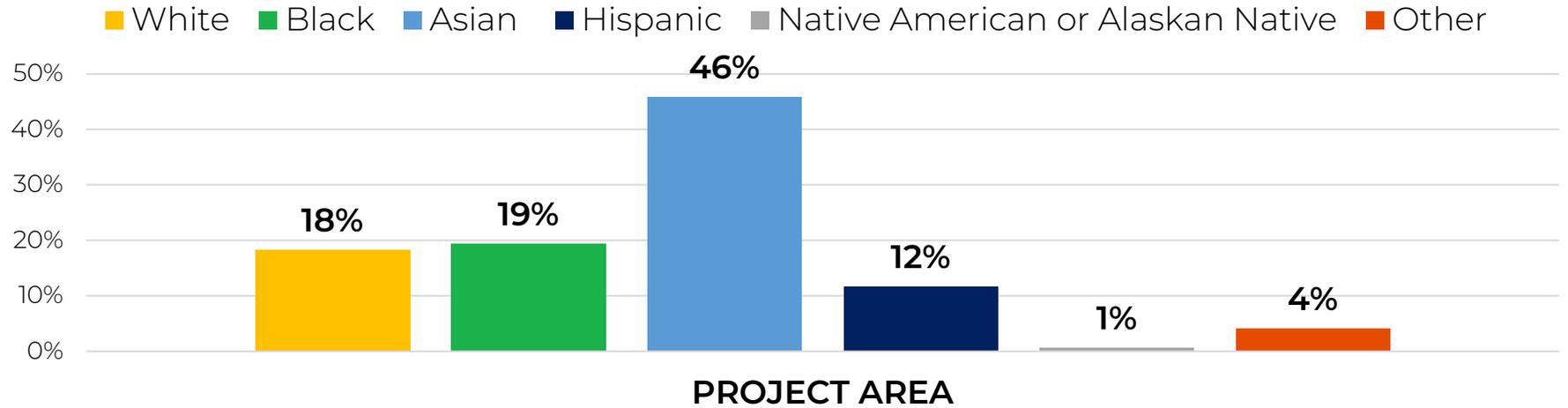
VEHICLE ACCESS: The Project Area has the most renter occupied units with zero to one car available



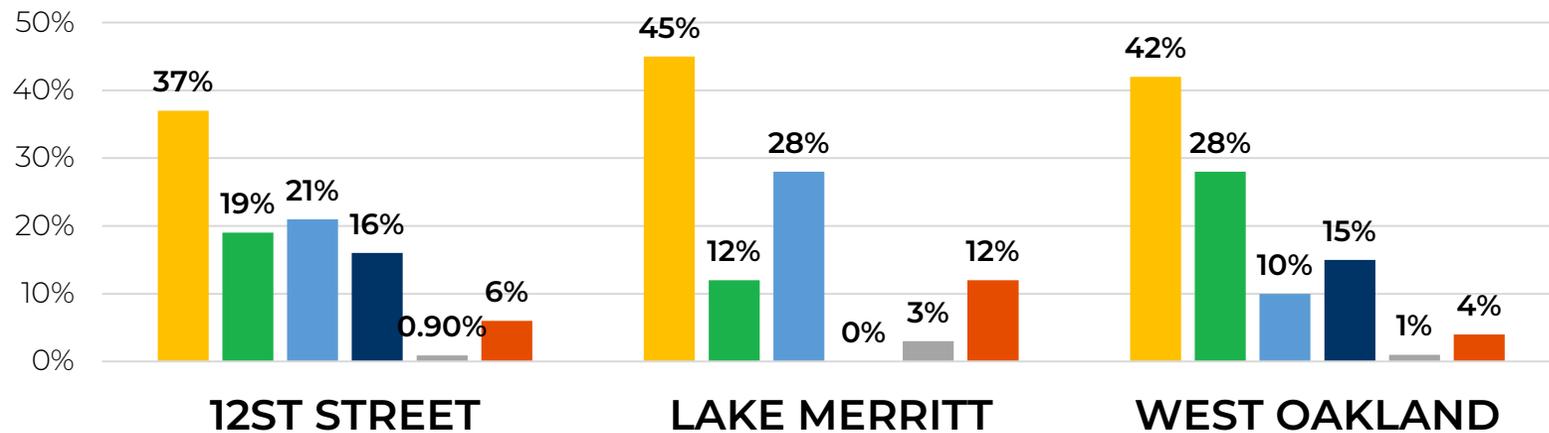
Public Transit - Racial Equity Analysis

While BART serves a critical transportation role for communities of color, it's riders are disproportionately Whiter than the residents around the stations

Residents' Race



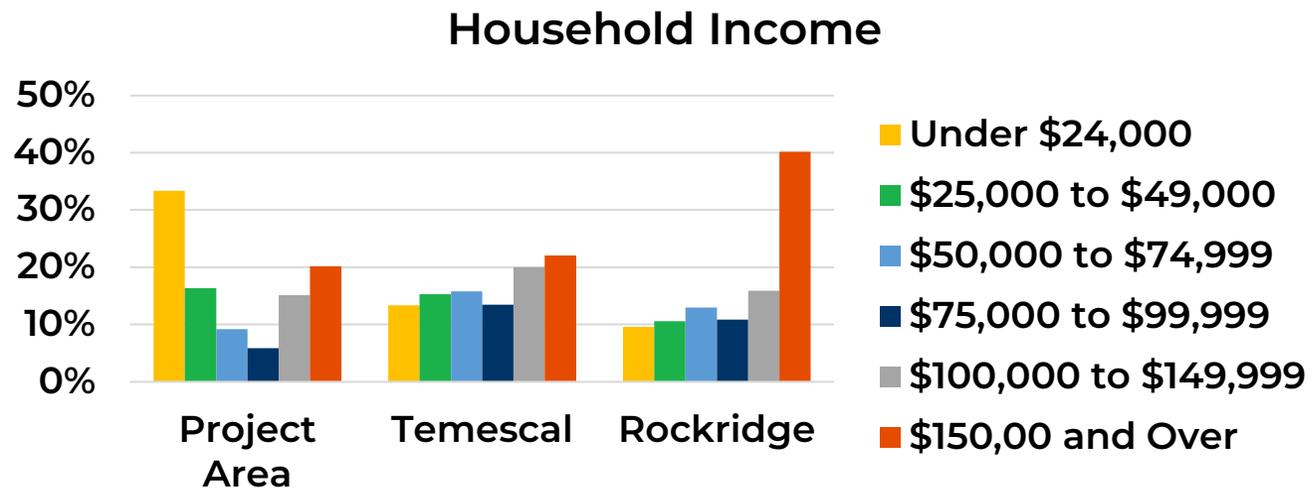
BART Riders' Race



Public Transit – Bus Service

- AC Transit serves many low-income residents
- Project Considerations:
 - Transit only lanes
 - Expanded or new bus service
 - Transit Hub
 - Transit passes for employees & residents
 - Enhance connections to BART - Free game-day shuttles
 - Transit fare subsidies for attendees
 - Coordinate with WETA and Amtrak

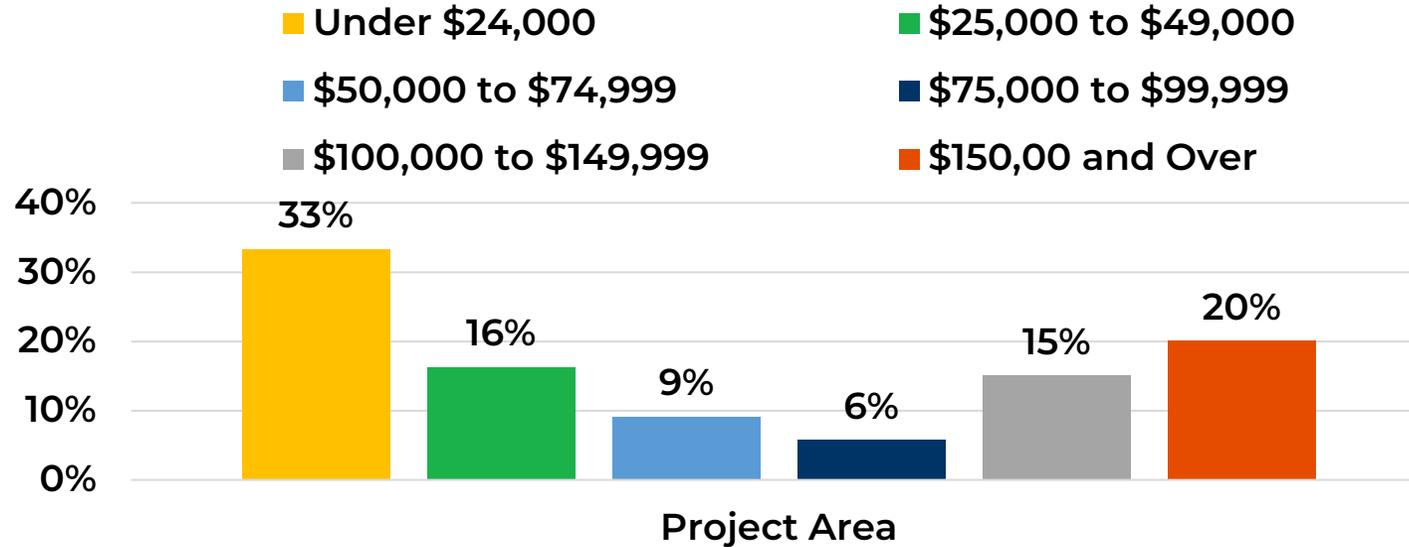
AC TRANSIT RIDERS: Majority have a household income under \$35,000 in the Project area



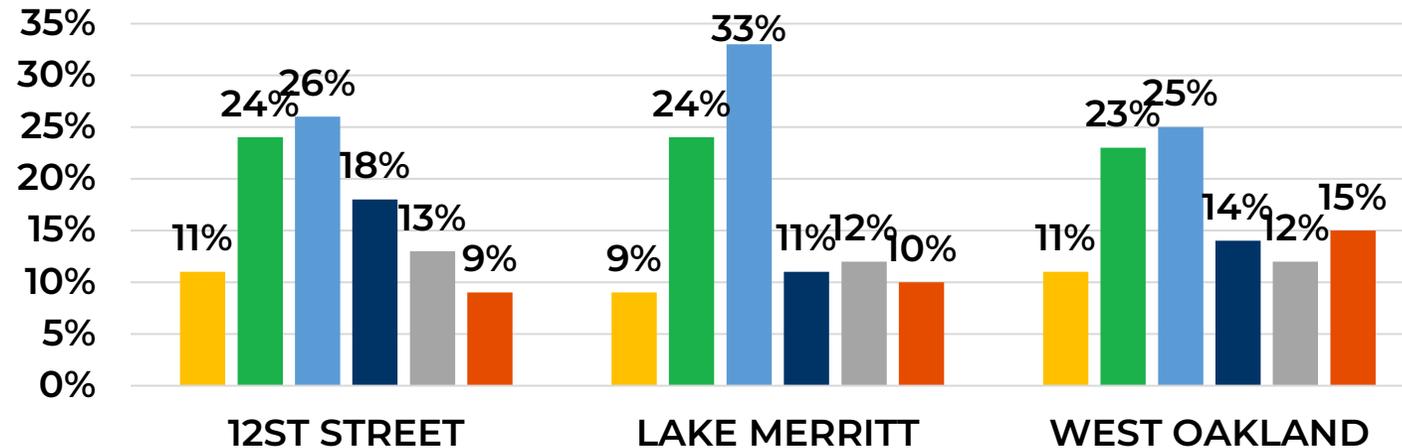
Public Transit – BART

BART in the Project Area is used disproportionately by lower-middle income households

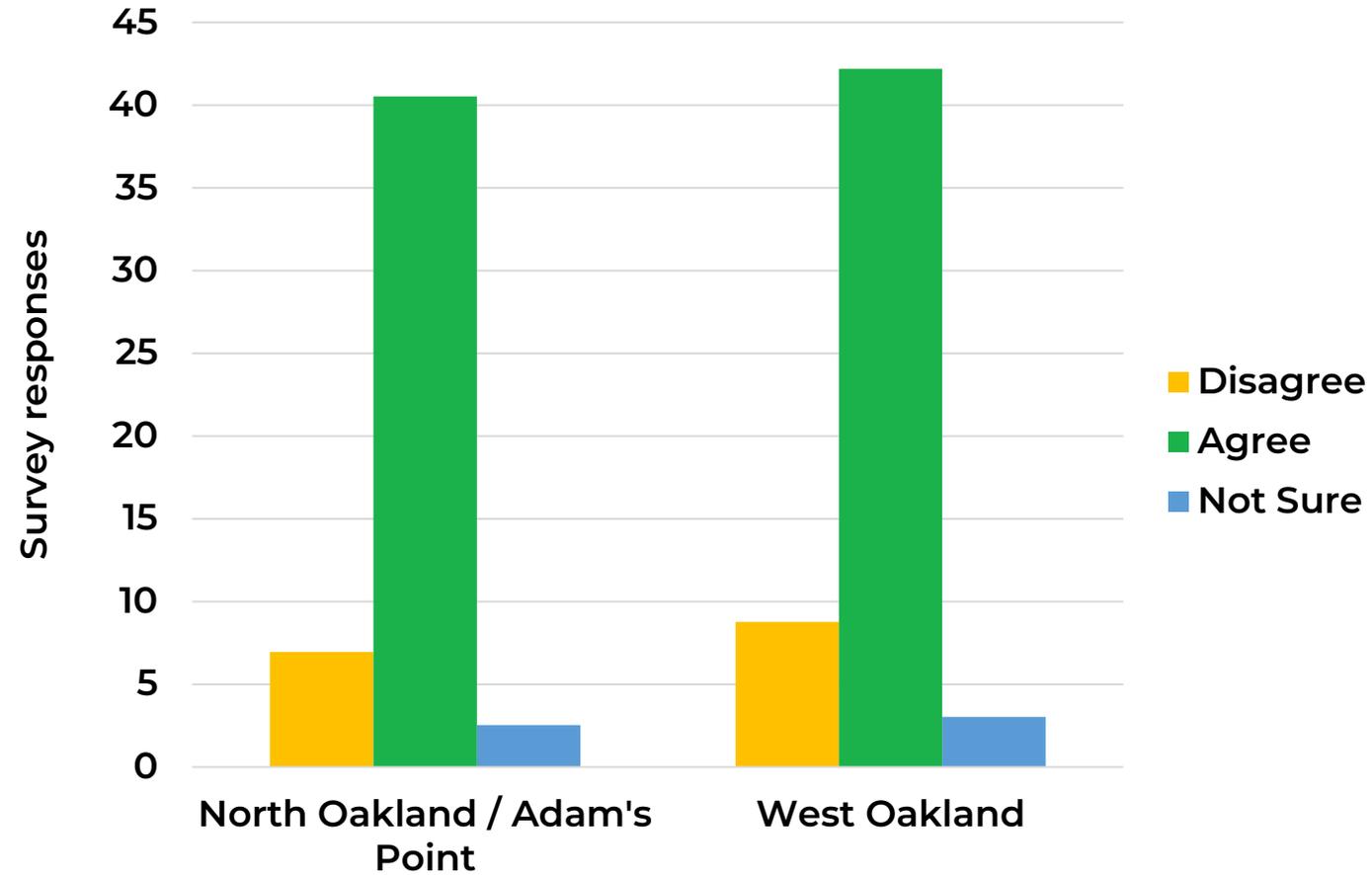
Resident
Income
Distribution
(households)



BART Riders'
Income
Distribution
(households)



Survey Question – Are there good public transit options in your neighborhood?

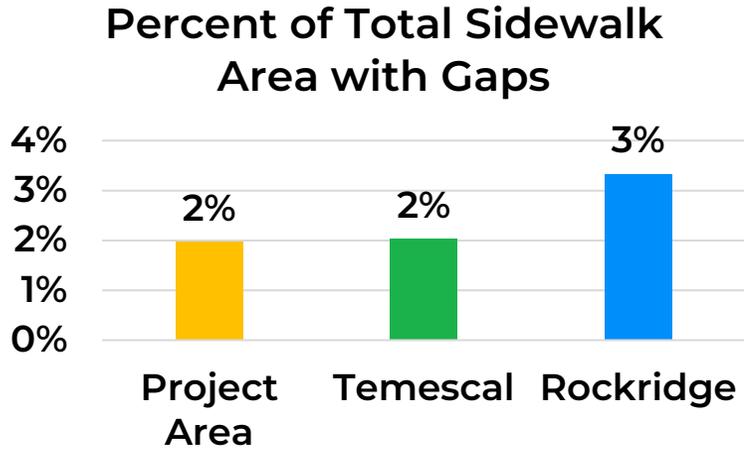




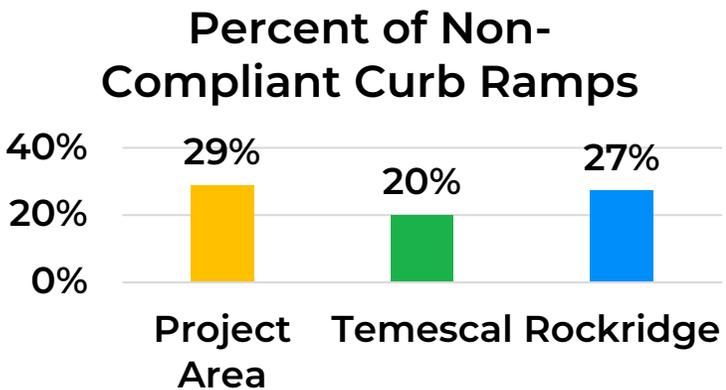
Walking and Biking

Walking - Racial Equity Analysis

- Some sidewalk gaps near the site



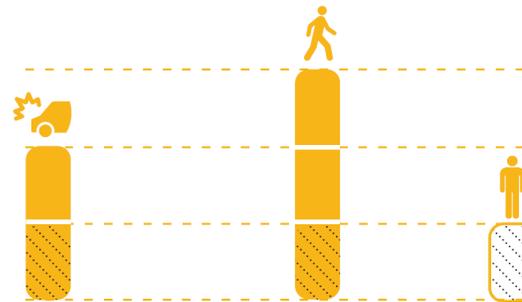
- Many non-compliant curb ramps where people of color with disabilities live



Walking - Equity Analysis



Older Oaklanders (65+) are more than **2 times** as likely to be killed in a crash compared to all other Oaklanders



Black Oaklanders are **2 times** as likely to be killed or severely injured in a crash (all modes) and **3 times** as likely to be killed or severely injured while walking compared to all other Oaklanders



30% of streets in majority **Asian census tracts** fall on the City of Oakland Pedestrian High Injury Network - the highest percentage of any ethnicity ³

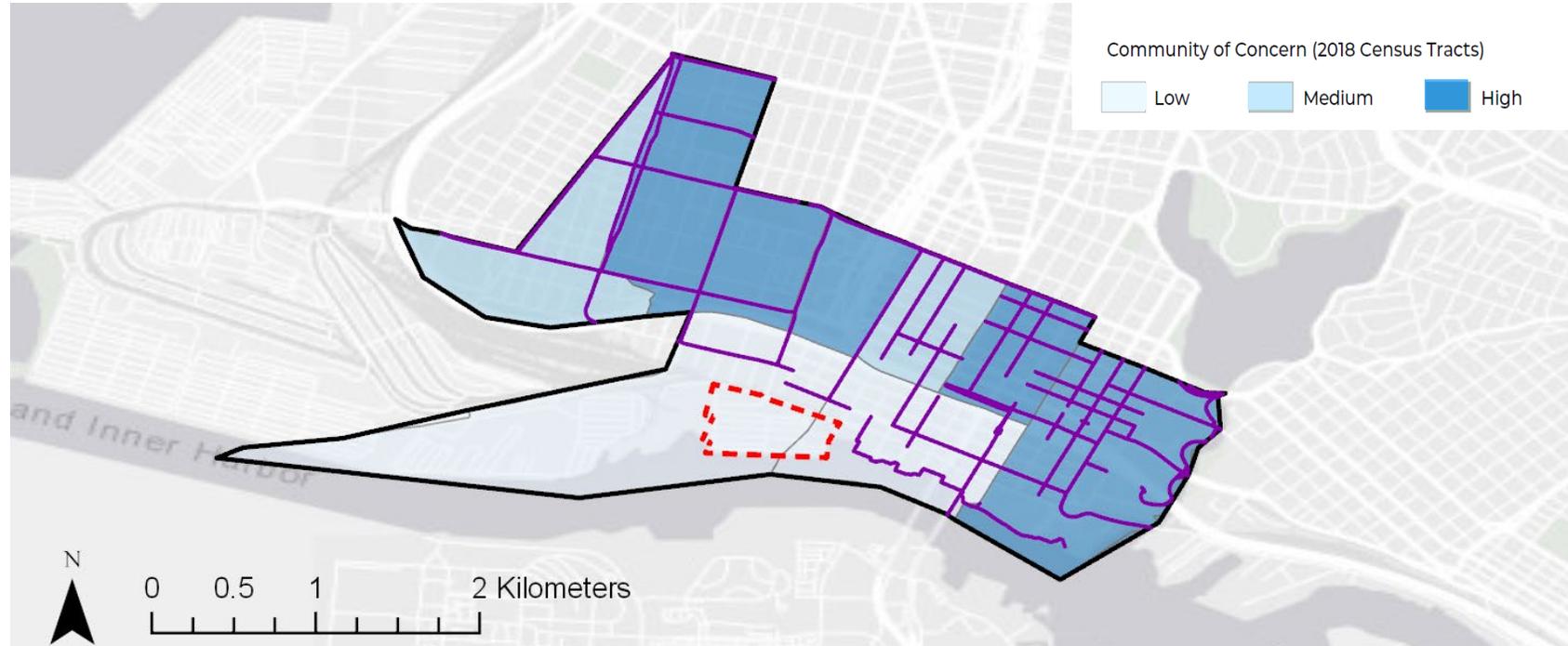


Biking- Racial Equity Analysis

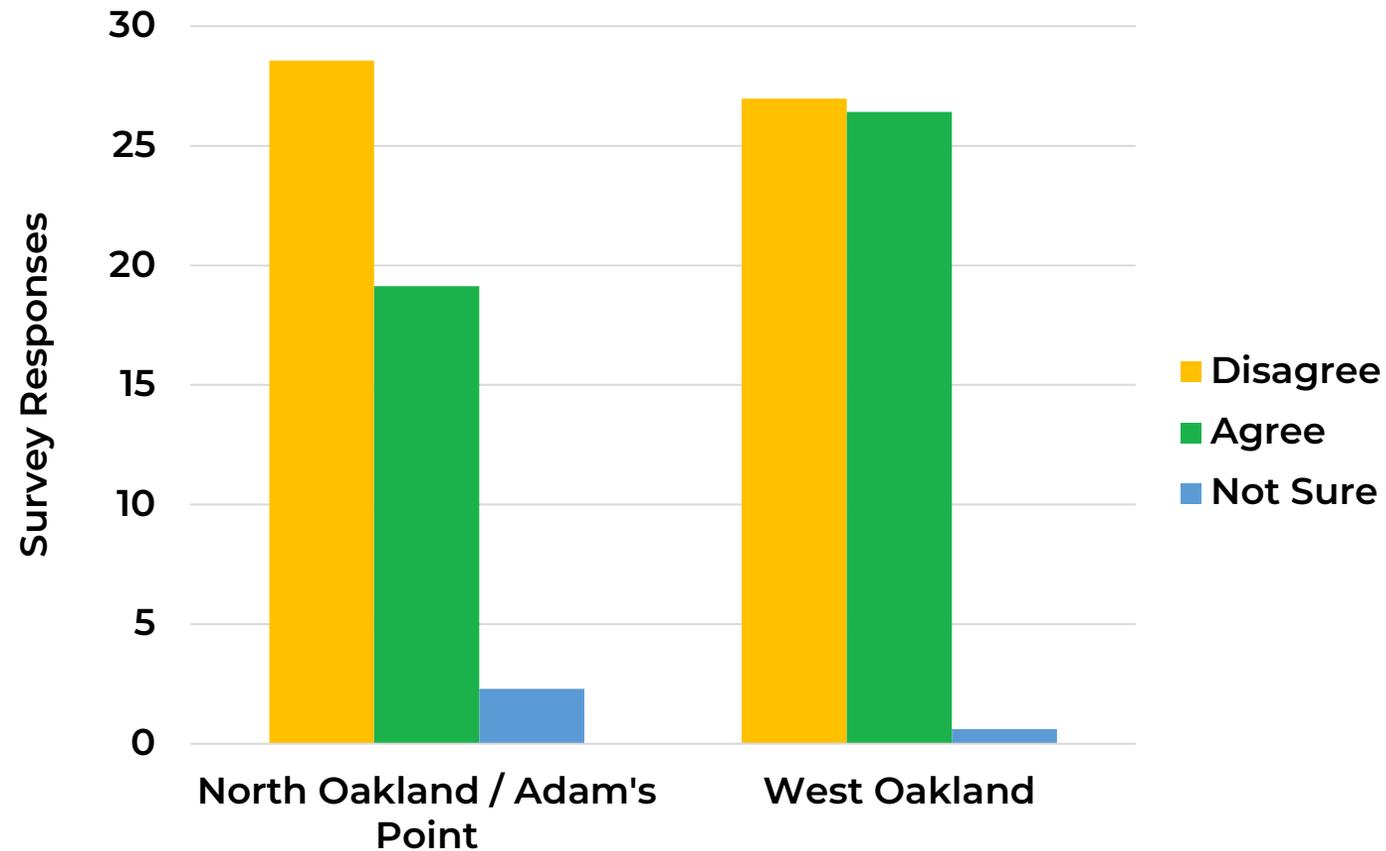
- Many bike lanes are near but not at the project site
- Lack of fully-protected bike lanes
- Freeway traffic, on/off ramps, and port trucking all contribute to a challenging biking environment

Bike Lanes ———

Howard Terminal - - -



Survey Question – Does the amount of traffic on the streets in your neighborhood make biking unsafe?

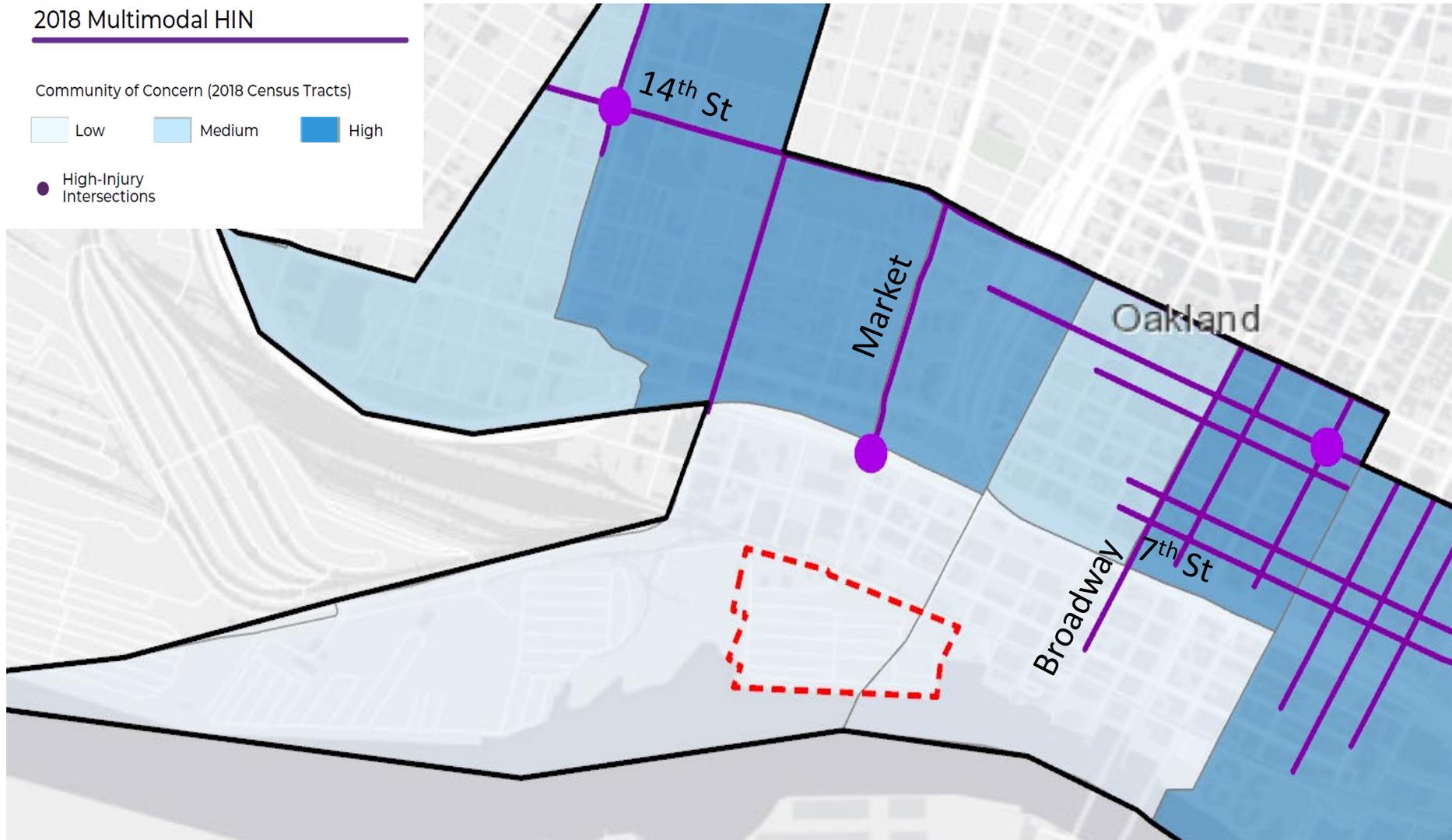




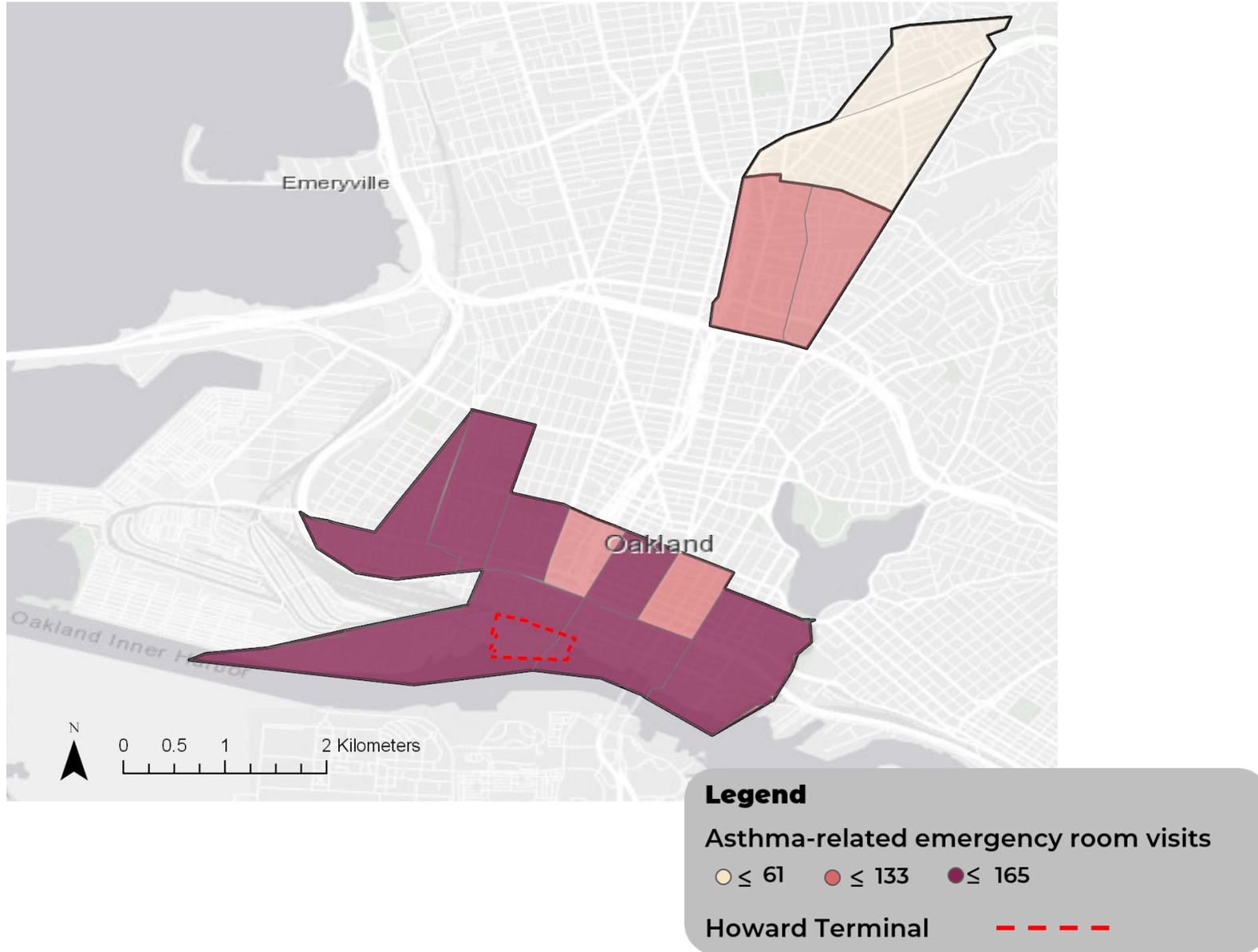
Parking and Traffic

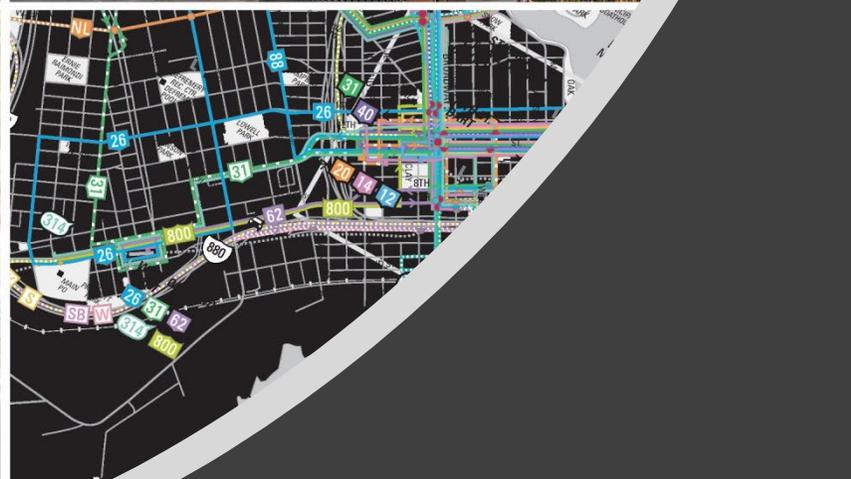
Parking and Traffic - Racial Equity Analysis

High injury network (HIN): the 6% of city streets that account for over 60% of severe and fatal crashes concentrate in COCs



Parking and Traffic - Racial Equity Analysis





Conclusions

How will the TOWN projects address existing disparities?

- Prioritize transportation improvements in priority equity communities to make other modes besides driving alone more safe, attractive, and reliable
 - **Disparities Addressed in the Project Area:**
 - Higher proportions of low-income households and communities of color, people with disabilities, seniors
 - Higher concentration of severe and fatal crashes
- Deliver high quality pedestrian improvements on all projects, including safety improvements, the closing of sidewalk gaps and delivering accessibility improvements
 - **Disparities Addressed in the Project Area:**
 - Non-compliant curb ramps are concentrated near people of color with disabilities
 - High concentration of high injury corridors in the project area
- Deliver higher quality bike lanes on key routes, and new high quality bike lanes on high injury corridors
 - **Disparities Addressed in the Project Area:**
 - Higher concentration of severe and fatal crashes



How will the TOWN projects address existing disparities?

- Deliver projects that connect people in their neighborhoods to transit options, and preserve neighborhood parking for residents
 - **Disparities Addressed in the Project Area:**
 - Lower access to vehicles
 - Communities of color drove alone more
 - Higher proportion of people in West Oakland disagreed when asked if there were good public transit options in their neighborhood
- Deliver improvements to corridors to decrease truck idling, and facilitate the relocation of the overweight truck route from West Oakland
 - **Disparities Addressed in the Project Area:**
 - Higher proportions of asthma-related emergency room visits



California State Transportation Agency

Port of Oakland

Baseline Agreement

July 21, 2022

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APPENDIX A Required Contract Provisions

**STATE OF CALIFORNIA
CALIFORNIA STATE TRANSPORTATION AGENCY**

Effective Date of this Agreement: Upon signatures by all Parties

Termination Date of this Agreement: June 30, 2027

Recipient: City of Oakland, a municipal corporation,
acting by and through its Board of Port
Commissioners ("Port of Oakland")

Present Funding Sources: Statutes of 2021, Ch. 21 Assembly Bill 128
Budget Act of 2021, FY 2021-22, Item 0521-102-
0001.

RECITALS

1. WHEREAS the 2021 Budget Act (A.B. 128) allocated up to \$279,500,000 to the California State Transportation Agency (CalSTA) for the Port of Oakland Truck, Rail and Neighborhood Safety Corridor Infrastructure to fund improvements that facilitate enhanced freight and passenger access in and around the seaport and waterfront, and to promote the efficient and safe movement of goods and people.
2. WHEREAS the funds appropriated under the Port of Oakland Budget Item: (1) shall be available for encumbrance until June 30, 2024; (2) shall be available for liquidation until June 30, 2027; and (3) may be transferred to item 0521-002-0001 of the Act with the prior approval of the Department of Finance.
3. WHEREAS the Port of Oakland continues to invest in capital infrastructure and Intelligent Transportation System initiatives that promote the efficient and safe movement of goods and people.
4. WHEREAS CalSTA and the Port of Oakland share a commitment to the continued introduction of zero-emissions and sustainable transportation initiatives to reduce the local health and global climate change impacts of freight activities.
5. WHEREAS the Port of Oakland identified several infrastructure programs and projects to the California Legislature that will accelerate these initiatives and provide additional benefits to both residents and stakeholders including: (1) port drayage truck route and rail corridor safety improvements; (2) heavy-weight truck corridor improvements; (3) rail crossing safety and train-vehicles-pedestrian

separation improvements; and (4) right of way acquisition for rail safety improvements.

6. WHEREAS concurrent with the execution of this Baseline Agreement, CalSTA delegates to Caltrans CalSTA's rights and/or responsibilities under this Baseline Agreement and any Project Supplements, except for funding obligations, approval and execution of Project Supplements and any amendments thereto, approval of any Corrective Action Plan, and approval and execution of any amendments to this Baseline Agreement, as further described herein.

NOW THEREFORE, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to this Baseline Agreement, entered into effective as of the signature by all Parties, and as may be amended from time to time is between the Port of Oakland and CalSTA.

1 DEFINITIONS

The terms defined in this Section 1 shall for all purposes of this Agreement have the meanings specified herein.

1.1 "Act" means Assembly Bill 128 (Stats. 2021, ch. 21).

1.2 "Agreement" means this Baseline Agreement and its attachments, together with each Project Supplement.

1.3 "Baseline Agreement" means this Baseline Agreement, inclusive of all attachments.

1.4 "CalSTA" means the California State Transportation Agency.

1.5 "Caltrans" means the California Department of Transportation.

1.6 "Corrective Action Plan" means the plan described in Section 2.2.2.1(c).

1.7 "Effective Date" means the date on which all Parties have executed this Baseline Agreement.

1.8 "Overall Funding Plan" means a plan that identifies the Projects, each Project's major components, and the committed funding program(s) or source(s) for each category of expenditure associated with each Project.

1.9 "Parties" means CalSTA and the Port of Oakland, with each referred to individually as a "Party".

1.10 “Port of Oakland” or “Port” means the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and is commonly referred to as the Port of Oakland.

1.11 “Port of Oakland Budget Item” means Item 0521-102-0001, which appropriated \$279.5 million to fund improvements that facilitate enhanced freight and passenger access in and around the seaport and waterfront, and to promote the efficient and safe movement of goods and people at the Port of Oakland, which funds must be encumbered by June 30, 2024, and liquidated by June 30, 2027.

1.12 “Project” means each component identified generally in Section 2.1.3, and any additional components added by Project Supplements.

1.13 “Project Supplement” means a Project-specific agreement executed by the Port and CalSTA pursuant to this Baseline Agreement and shall include all Project-specific information required by CalSTA and shall include expected outcomes and deliverables.

1.14 “Project Supplement Termination” means the date of the earliest to occur of: full performance of the Port’s obligations under the Project Supplement; by mutual agreement of the Parties; or when otherwise terminated under this Agreement.

1.15 “Program” or “Port Improvement Program” means the aggregate Projects, such as studies, capital improvements, and other activities to support the purposes of the Port of Oakland Budget Item.

1.16 “Project Closeout Report” means the report the Port will send upon completion of all work within a Project Supplement, which shall include the following: (a) Scope of completed Project component as compared to its description in the Project Supplement; (b) description of Project outcomes and how they relate to the goals of the Program as set forth in this Agreement and Project Supplements, including any other descriptions required by the Project Supplement; (c) the final costs by component and fund type as compared to the Project Financial Plan; (d) the Project duration as compared to the Project Schedule.

1.17 “Project Financial Plan” means the plan that contains the budget for the Project’s work and identifies estimated expenditures by funding source for the work in a Project Supplement, provided that, for the purposes of this Agreement, CalSTA is only monitoring compliance for expenditures of State funds. Information regarding non-state funds may be reported generally, although with enough specificity regarding the source and amount of non-State funds for CalSTA to be reasonably satisfied that sufficient funds exist to complete the relevant Project.

1.18 “Progress Payment Invoice” means a signed invoice reflecting actual Project costs incurred and paid for by the Port consistent with the allocation and Scope of Work in the applicable Project Supplement.

1.19 “Project Schedule” means the schedule in each Project Supplement that includes major tasks and/or milestones and the anticipated start and end dates for each.

1.20 “Scope of Work” means a detailed description of the Project that itemizes the major tasks and their estimated costs, as well as includes each deliverable and the requirements for each deliverable within a Project Supplement.

1.21 “State” means the State of California, including its separate constitutional officers, agencies, and departments, and their officers and directors.

2 PROGRAM, PROJECT, AND ADMINISTRATION

2.1 Program, Project, and Project Management

2.1.1 Overall Funding Plan Submittal

Within one year of the signing of this Baseline Agreement by all Parties or the execution of any Project Supplement by all Parties, whichever is later or upon another timeline mutually agreed to by the Parties, the Port shall submit the Overall Funding Plan to Caltrans (with a copy to CalSTA) for Caltrans's approval, whose approval shall not be unreasonably withheld. The Overall Funding Plan may be revised or updated from time to time as Project Supplements are approved.

2.1.2 Project Supplement Funding and Administration

Each Project Supplement shall be funded by CalSTA in accordance with the Act, this Baseline Agreement, and the relevant Project Supplement. The Port and/or other agencies identified in a Project Supplement may administer any Project Supplement in accordance with the best management practices identified in similar grant programs administered by CalSTA or its constituent departments, boards, or commissions.

2.1.3 Program Components

The Program consists of the four components generally described below, which will be further detailed in their respective Project Supplements:

- 2.1.3.1 7th Street Grade Separation East. This Project is anticipated to realign and reconstruct the existing railroad

underpass and multi-use path along 7th Street between west of I-880 and Maritime Street in the City of Oakland, increase vertical and horizontal clearances for trucks to current standards (including seismic and geometric standards), improve the shared pedestrian/bicycle pathway, and provide efficient multimodal landside access and infrastructure improvements to promote existing and anticipated Port operations.

2.1.3.2 West Oakland & Jack London Square Rail Safety Enhancement Project. This Project would advance and substantially, if not fully, complete the engineering, cost-estimating, design work, project management, right of way acquisition, and/or construction associated with improvements to safety on the rail corridor mainline tracks accessing the Port of Oakland and the West Oakland/Jack London Square Districts of the City of Oakland. The improvements may include upgrading at-grade rail crossings, constructing physical barriers at or near crossings, separating grades, and designing and/or constructing capital improvements to reduce freight delays, enhance passenger access, and/or increase the overall efficiency of goods movement within the Oakland seaport area & waterfront.

2.1.3.3 Vehicular & Pedestrian Grade Separation Improvements. This Project would advance and substantially, if not fully, complete the engineering, cost-estimating, design work, project management, right of way acquisition, and/or construction associated with potential grade separation improvements for trucks, cars, pedestrians, and/or bicycles at one or more rail crossings providing access to the Oakland seaport area & waterfront and enhance passenger access.

2.1.3.4 Local Road, Intersection, and Congestion Management Improvements. This Project would advance and substantially, if not fully, complete the planning, engineering, cost-estimating, design work, project management, right of way acquisition, and/or construction associated with infrastructure improvements and programs to relieve congestion and reduce conflicts on local roadways that serve as major access routes for trucks, vehicles, pedestrians, and bicyclists accessing the Oakland seaport area & waterfront from the local highway and roadway network and nearby transit nodes.

The foregoing list of Projects is not intended to be exhaustive and may be augmented if there are costs savings or additional funding is allocated.

2.1.4 **Project Representatives**

All inquiries during the term of this Baseline Agreement and any applicable Project Supplements shall be directed to the project representatives identified below, as such representatives may be replaced with prior written notice to the other party:

State Project Representative:

California State Transportation Agency
Giles Giovinazzi
Senior Advisor
(916) 323-5400
giles.giovinazzi@calsta.ca.gov

Port of Oakland Project Representative:

Port of Oakland
Kristi McKenney
Chief Operating Officer
(510) 627-1178
kmckenney@portoakland.com

Caltrans Project Representative:

California Department of Transportation
Cathy McKeon
Chief, Office of State Programs, HQ
Caltrans Local Assistance
(916) 926-7882
cathy.mckeon@dot.ca.gov

2.2 **Project Supplements**

2.2.1 **General**

2.2.1.1 The Parties shall mutually execute the Project Supplements prior to commencement of work. The Port shall execute each Project Supplement after obtaining a resolution duly adopted by its Board of Port Commissioners that specifically authorizes execution of each Project Supplement.

2.2.1.2 A financial commitment of actual funds will only occur in each separate Project Supplement. No funds are obligated

or encumbered by the execution of this Baseline Agreement alone.

- 2.2.1.3 The Port further agrees to comply with all of the terms and conditions of this Baseline Agreement and all the agreed-upon special covenants and conditions set forth in the relevant Project Supplement as a condition to the release and payment of the funds encumbered for each deliverable identified in the particular Project Supplement's Scope of Work.
- 2.2.1.4 Each Project Supplement shall include a detailed Scope of Work, a Project Schedule, a Project Supplement Funding Plan for the relevant Project or portion of the Project, any revisions or updates to the Overall Funding Plan if affected, and Project-specific reporting requirements.
- 2.2.1.5 Each Project Supplement shall incorporate the terms and conditions of this Baseline Agreement by reference. Adoption and execution of a Project Supplement by the Port and CalSTA, incorporating the terms and conditions of this Baseline Agreement into the Project Supplement as though fully set forth therein, shall be sufficient to bind the Port to these terms and conditions when performing its responsibilities under the Project Supplement.
- 2.2.1.6 The estimated cost and scope of a particular Project will be as described in the applicable Project Supplement and shall be consistent with the Overall Funding Plan. CalSTA shall not participate in any funding for a particular Project beyond those amounts actually encumbered by CalSTA as set forth in the applicable Project Supplement.
- 2.2.1.7 The expiration date of any Project Supplement may be extended to the extent necessary to allow for completion of deliverables and payment of funds consistent with this Agreement, provided, however, that no Project Supplement Termination shall be extended past the liquidation deadline in the Port of Oakland Budget Item (i.e., June 30, 2027). Notwithstanding anything in this Agreement, in no event shall funds be paid under this Agreement after the liquidation deadline in the Port of Oakland Budget Item.

2.2.2 Project and Program Overrun

2.2.2.1 If the Port, Caltrans, or CalSTA determines, at any time during the performance of the Program, that the Overall Funding Plan allowed under the Port of Oakland Budget Item, or the budget for any individual Project Supplement, may be exceeded, the Port shall take the following steps:

a. Notify the designated Caltrans and CalSTA representatives of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which the Port will institute to bring the Overall Funding Plan or Project Financial Plan, as applicable, into balance; and

b. Identify the source of additional Port or other third-party funds that can be made available to complete the Project or Projects, as applicable, underway. The Port agrees that the allocation of additional funds to the Program is subject to appropriation and allocation by the State Legislature. The Port understands and agrees that CalSTA cannot guarantee additional funding.

c. Corrective Action Plan. If the costs savings are insufficient or additional funds are not appropriated and allocated for the Program and/or any particular Project, the Port shall provide CalSTA (with a copy to Caltrans) a corrective action plan for the Program and/or a Project ("Corrective Action Plan") for CalSTA's reasonable approval. The Corrective Action Plan shall include, at minimum, a new budget, and any necessary revisions to the Overall Funding Plan and/or Project scope so it can be completed within that budget, and additional major tasks/milestones to measure progress.

2.2.3 Cost Savings and Project Completion

2.2.3.1 The Port is encouraged to evaluate design and construction alternatives that would mitigate the costs of delivering the Projects. The Port shall take all commercially reasonable steps that are necessary in accordance with best management practices to complete each Project. In determining cost savings, the Port and Caltrans shall take into account all avoided costs, including avoided design, material, equipment, labor, construction, testing, acceptance and

overhead costs, and avoided costs due to time savings, and all the savings in financing costs associated with such avoided costs.

2.2.3.2 If the Port and Caltrans approve an alternative resulting in reduction of Project costs or there are other Program savings or windfalls, the Parties may revise the Overall Funding Plan to show the affected Project Supplement(s). Any budget surplus may be directed to another Project or additional Projects upon written agreement by the Port and CalSTA, and the Overall Funding Plan shall be updated accordingly.

2.2.3.3 Each Project Supplement shall identify any additional funding sources and amounts in the Project Financial Plan.

2.2.4 **Scope of Work**

2.2.4.1 The Port shall be responsible for complete performance of the work described in each Project Supplement. All work shall be accomplished in accordance with the applicable provisions of the Act, the Port of Oakland Budget Item, any relevant annual State budget acts, and applicable state and federal law.

2.2.4.2 The Port acknowledges and agrees that State is not responsible for the subsequent employment, operation, repair, and maintenance of any Project funded by this Agreement. All work funded by this Agreement shall facilitate the purposes of the Program, including enhanced freight and passenger access in and around the seaport and waterfront, and to promote the efficient and safe movement of goods and people. The Port shall be solely responsible for complying with the applicable funding and use restrictions established by (a) the Act and Port of Oakland Budget Item, (b) the State Treasurer, (c) the Internal Revenue Service, (d) the applicable Project Supplement, and (e) this Baseline Agreement.

2.2.4.3 The Port acknowledges and agrees that the Port is responsible for complying with all reporting requirements established by the Act and Port of Oakland Budget Item according to the Agreement.

2.3 Allowable Costs and Payments

2.3.1 Allowable Costs and Progress Payment Invoice

2.3.1.1 At intervals mutually agreed upon by the Port and Caltrans, but not more frequently than monthly, the Port will prepare and submit to Caltrans a Progress Payment Invoice. If no costs were incurred during any given quarter, the Port is exempt from submitting a signed Progress Payment Invoice.

2.3.1.2 With approval of each Progress Payment Invoice by Caltrans, CalSTA shall pay to the Port (or other entity designated in the Project Supplement) those uncontested allowable costs under such Progress Payment Invoice or final Progress Payment Invoice.

2.3.1.3 Neither Caltrans nor CalSTA shall be required to authorize the reimbursement of more funds, cumulatively, of any fiscal year greater than the sums identified and included in the Overall Funding Plan. Caltrans, in consultation with CalSTA, shall hold the right to determine reimbursement availability based on an approved expenditure plan and actual funding capacity. Each invoice will report the total of Project expenditures (including those of the Port and third parties) and will specify the Project Supplement and percentage of CalSTA reimbursement requested.

2.3.2 Final Invoice

Within one hundred and eighty (180) days after the Project Supplement Termination, the Port shall submit to CalSTA and Caltrans a Project Closeout Report and the final Progress Payment Invoice for reimbursement of allowable Project costs. The Port expressly waives and releases any and all rights to allowable reimbursements from State pursuant to this Agreement for costs incurred after Project Supplement Termination and for costs invoiced to the Port for payment after that one hundred and eightieth (180th) day following the Project Supplement Termination. No funds may be paid under this Agreement after the liquidation deadline in the Port of Oakland Budget Item.

3 GENERAL PROVISIONS

3.1 Other Reimbursable Project Expenditures

3.1.1 Project Labor Agreement

3.1.1.1 Unless otherwise precluded by law and to the extent any Project work is covered under a project labor agreement, such as the Port's Maritime and Aviation Project Labor Agreement (MAPLA), reimbursable expenditures may include costs necessarily incurred as a result of the terms of the project labor agreement in effect at the time the work is performed. For example, payment of applicable wages and benefits under a craft Master Labor Agreement and payment into the MAPLA's Social Justice Labor Management Cooperation Trust Fund are eligible expenses.

3.1.2 Owner Controlled Insurance Program

3.1.2.1 Unless otherwise precluded by law and to the extent any Project components are covered by the Port's Owner Controlled Insurance Program (OCIP), reimbursable expenditures may include costs of OCIP, including actual amounts of premiums attributable to work for a Project and detailed in the Project Financial Plan.

3.2 Audits and Reports

3.2.1 Cost Principles

3.2.1.1 The Port agrees to comply with Title 2 Code of Federal Regulations Part 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local Government, and Audit Requirements for Federal Awards, to the fullest extent for determining the eligibility of reimbursable costs.

3.2.1.2 The Port agrees, and will assure that, its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement shall comply with 2 CFR 200, to the fullest extent for determining the eligibility of reimbursable costs.

- 3.2.1.3 Any Project costs for which the Port has received payment that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by the Port to CalSTA or, if possible, reallocation. For reallocation, CalSTA in its sole discretion but in consultation with Port and Caltrans, will determine if reallocation is possible and if so, how to reallocate the amount of such costs to other Project work to be performed. If no Project work remains to provide for reallocation, the Port shall reimburse the amount of unallowable costs to CalSTA within ninety (90) days of the final determination of the unallowable costs.
- 3.2.1.4 Should the Port fail to reimburse moneys finally determined to be due to CalSTA under this Agreement (after all applicable opportunities provided by Section 3.3.3 (Termination by CalSTA) have been exhausted) within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, CalSTA is authorized to intercept and withhold future payments due the Port from State or any third-party source whose funding passes through the State, including but not limited to, the State Treasurer, the State Controller, and the California Transportation Commission.
- 3.2.1.5 The State may terminate a Project Supplement if a final audit under this section determines that there has been a violation of any State or federal law or policy by the Port or any sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement during performance under this Agreement. If the Agreement or any project supplement, as applicable, is terminated under this section, the Port may be required to fully or partially repay funds no later than 90 days after CalSTA gives notice of the final determination.
- 3.2.1.6 To the extent that a finding of an unallowable cost or a violation of any State or federal law or policy by the Port or any sub-recipient receiving Project funds as a contractor or sub-contractor under this Agreement during performance under this Agreement is curable, as determined by CalSTA in its sole discretion but in consultation with Port and Caltrans, CalSTA will follow the termination provisions of Section 3.3.3 (Termination by CalSTA).

3.2.2 Record Retention

- 3.2.2.1 The Port agrees, and will assure that, its sub-recipients, contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of the Port, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.
- 3.2.2.2 All accounting records and other supporting papers of the Port, its contractors and subcontractors connected with Program and Project performance under this Agreement and each Project Supplement shall be maintained for a minimum of three (3) years from the date of final payment to the Port under a Project Supplement and shall be held open to inspection, copying, and audit by the California State Auditor, any other relevant auditor for the State of California (e.g., Caltrans' Independent Office of Audits and Investigations), and, to the extent applicable or appropriate, auditors representing the federal government. Copies thereof will be furnished by the Port, its contractors, and subcontractors upon receipt of any request made by State or its agents.
- 3.2.2.3 In conducting an audit of the costs and match credits claimed under this Agreement, CalSTA will rely, to the maximum extent allowable, on any prior audit of the Port pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by the Port's external and internal auditors may be relied upon and used by State when planning and conducting additional audits.
- 3.2.2.4 For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of the Port's contracts with third parties pursuant to Government Code section 8546.7, the Port, its contractors and subcontractors, and State, shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the

performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such Agreement and Project Supplement materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to the Port under any Project Supplement. CalSTA, the California State Auditor, or any duly authorized representative of the State or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and the Port shall furnish copies thereof if requested.

3.2.3 Reporting Requirements

3.2.3.1 Reporting requirements of the Port to Caltrans will include whether reported implementation activities are within the scope of the Project Supplement and in compliance with all applicable State and federal laws, regulations, and administrative requirements.

3.2.3.2 Progress Reporting by the Port to Caltrans shall be made no more frequently than quarterly and no less frequently than semi-annually at the discretion of Caltrans and shall include in general terms the following information for each Project Supplement:

a. Activities and progress made towards implementation of the Project during the reporting period and activities anticipated to take place in the next reporting period;

b. Identification of whether the Project Schedule, deliverables, and Scope of Work is proceeding on schedule and within budget;

c. Identification of changes to the Project Financial Plan, milestone schedule, or deliverables completion date; and

d. Identification of any actual or anticipated changes or delays in the Project Schedule, deliverables, or Scope of Work, such as increased costs or other difficulties for either the Project or other State-funded projects impacted by the Scope of Work and the efforts or activities being undertaken to minimize impacts to schedule, cost, or deliverables.

3.3 Special Requirements

3.3.1 Environmental Responsibilities

3.3.1.1 The Port shall conform to any and all permit and mitigation duties associated with Project as well as all environmental obligations established by law or regulation at the time a Project Supplement is signed, as applicable, at the expense of the Port and/or the responsible party and without any further financial contributions or obligations on the part of State unless a separate Project Supplement expressly provides funding for the specific purpose of hazardous materials remediation.

3.3.2 Port Resolution

3.3.2.1 The Port has executed this Baseline Agreement pursuant a duly authorized resolution of its Board of Port Commissioners. All Project Supplements will be executed by the Port only pursuant a duly authorized resolution of its Board of Port Commissioners.

3.3.3 Termination By CalSTA

3.3.3.1 In addition to the termination provision in Section 3.2.1.5, in the event of a material breach of any Project Supplement or this Baseline Agreement CalSTA reserves the right to terminate funding for any Project Supplement upon written notice to the Port. One example of a material breach would be the Port's failure to adhere to a Project Schedule and/or Project Financial Plan and subsequent failure to submit a Corrective Action Plan such that substantial performance of the Scope of Work is materially endangered.

3.3.3.2 No such termination under Section 3.2.1.5 or Section 3.3.3 (Termination by CalSTA) shall become effective if, within sixty (60) days after receipt of a written notice of termination, the Port either cures the default involved or, if not reasonably susceptible of cure within said sixty (60)-day period, the Port proceeds thereafter to complete the cure in a manner and timeline acceptable to CalSTA set in advance and in writing by CalSTA. Any such termination shall be accomplished by delivery to the Port of a notice of termination, which notice shall become effective not less than sixty (60) days after receipt, specifying the reason for the termination, the extent to

which funding of work under this Agreement is terminated and the date upon which such termination becomes effective, if beyond sixty (60) days after receipt. During the period before the effective termination date, the Port and State shall meet to attempt to resolve any dispute.

3.3.3.3 Following a fund encumbrance made pursuant to a Project Supplement, if the Port fails to expend monies within the time allowed specified in the Project Supplement, the Parties shall collaborate in good faith to revise the Project Supplement's Project Schedule or to reallocate such funds to other Project components or Project Supplements, in accordance with the Overall Funding Plan and the purposes of the Program.

3.3.3.4 In the event CalSTA terminates a Project Supplement for convenience and not for a default on the part of the Port as is contemplated in this section, the Port shall be reimbursed its authorized costs up to State's proportionate and maximum share of allowable Project costs incurred to the date of the Port's receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by the Port to effect such termination following receipt of that termination notice.

3.3.4 **Third Party Contracting and Other Provisions**

3.3.4.1 The Port and/or its subrecipients shall award construction contracts in accordance with, as applicable, the Port's Purchasing Authorities and Procedures (Port Ordinance No. 4576) or the City of Oakland's Municipal Code and Procurement Policies and Procedures, as each may be amended or superseded, for work to be performed under a Project Supplement, which includes competitively awarding such contracts as required.

3.3.4.2 The Port agrees to all of the following provisions with respect to this Agreement:

3.3.4.2.1. DRUG-FREE WORKPLACE REQUIREMENTS: The Port will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- b. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) the dangers of drug abuse in the workplace;
 - 2) the person's or organization's policy of maintaining a drug-free workplace;
 - 3) any available counseling, rehabilitation and employee assistance programs; and,
 - 4) penalties that may be imposed upon employees for drug abuse violations.
- c. Every employee who works on the proposed Agreement will:
 - 1) receive a copy of the company's drug-free workplace policy statement; and,
 - 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and the Port may be ineligible for award of any future State agreements if CalSTA determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3.3.4.2.2 The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: The Port needs to be aware of the following provisions regarding current or former state employees. If the Port has any questions on the status of any person rendering services or involved with the Agreement, CalSTA must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If the Port violates any provisions of above paragraphs, such action by the Port shall render this Agreement void. (Pub. Contract Code §10420.)

2. LABOR CODE/WORKERS' COMPENSATION: The Port needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and the Port affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: The Port assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
 4. CONTRACTOR NAME CHANGE: An amendment is required to change the Port's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
 5. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.
 6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
- 3.3.4.3 Any subcontract entered into by the Port as a result of this Agreement shall contain the provisions of Section 3.2 (Audits and Reports) in the manner set forth in **Appendix A** (Required Contract Provisions).
- 3.3.4.4 The Port agrees to require its contractors and subrecipients to comply with all applicable federal and state laws.

3.3.5 Change in Funds and Terms/Amendments

This Baseline Agreement and the Project Supplements may be modified, altered, or revised only by a written amendment that is executed by the Parties in accordance with Section 4.4 (Amendment).

3.3.6 Public Purpose of Projects

3.3.6.1 Each Project funded under this Agreement shall be for a public purpose and not a private one.

3.3.6.2 Project right-of-way, Project facilities constructed or reconstructed on the Project site and/or Project property purchased by the Port (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this Agreement) shall remain permanently dedicated, to the fullest extent permitted by law, to the described uses in the same proportion and scope, and to the same extent as mandated in the Project Supplement, unless CalSTA agrees otherwise in writing. The exceptions to this section are outlined below:

3.3.6.3 Except as otherwise set forth in this Section 3.3.6 (Public Purpose of Projects), State, or any other State-assignee public body acting on behalf of CalSTA, shall be entitled to a refund or credit (collectively, "the Credit"), at State's sole option, equivalent to the proportionate Project funding participation received by the Port from State if the Port, or a sub-recipient, as applicable, ceases to utilize Project for the original intended purposes. If federal funds (meaning only those federal funds received directly by the Port and not federal funds derived through or from the State) have contributed to the Project, the Port shall notify both State and the original federal source of those funds of the disposition of the Project assets or the intended use of those sale or transfer receipts.

3.3.7 Disputes

If the Port, Caltrans, and/or CalSTA are unable to reach agreement on any particular issue relating to the obligations contained in this Agreement, the Port, Caltrans, and CalSTA agree to promptly follow the issue resolution process as outlined below, with all timelines subject to amendment by mutual agreement by the Port and Caltrans (for Step 1) and the Parties (for Steps 2 and 3):

- 3.3.7.1 Step 1: Caltrans' project manager and the Port's Executive Director (or designee) may initiate the process of informal dispute resolution by providing the other party with written notice of a dispute. The written notice shall provide a clear statement of the dispute, and shall refer to the specific provisions of this Baseline Agreement or Project Supplement that pertain to the dispute. Caltrans' project manager and the Port's Executive Director (or designee) shall meet and attempt to resolve the dispute within five days from the written notice. If the dispute is resolved, the parties shall create and sign a short description of the facts and the resolution that was agreed upon by the parties.
- 3.3.7.2 Step 2: If the dispute is not resolved by the fifth day from the written notice, CalSTA's Undersecretary (or designee) and the Port's Executive Director (or designee) shall meet and review the dispute within five days. CalSTA's Undersecretary (or designee) and the Port's Executive Director (or designee) shall attempt to resolve the dispute within ten days of their initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.
- 3.3.7.3 Step 3: If the dispute is not resolved by the tenth day, CalSTA's Secretary (or designee) and the Port's Executive Director (or designee) shall meet and review the dispute within five days. CalSTA's Secretary (or designee) and the Port's Executive Director (or designee) shall attempt to resolve the dispute within ten days of the initial meeting. If the dispute is resolved, the Parties shall create and sign a short description of the facts and the resolution that was agreed upon by the Parties.

3.3.8 **Hold Harmless and Indemnification**

- 3.3.8.1 Neither State nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the Port, its agents, subrecipients, and contractors under or in connection with any work performed or project deliverables under this Baseline Agreement or any Project Supplement. The Port shall fully defend, indemnify, and save harmless the State and its officers and employees from any claims, losses, or liability imposed for injury and/or damages or environmental obligations or duties arising or created by reason of anything done or omitted by

the Port, any and all of Port's contractors, subcontractors, subrecipients, and any other person, firm, or corporation furnishing or supplying work, services, materials, and/or supplies in connection with the performance of this Baseline Agreement and all Project Supplements.

3.3.8.2 The Port shall indemnify, defend and hold harmless State relative to any misuse by the Port of funds disbursed by CalSTA under this Agreement or other fiscal acts or omissions of the Port directly related to this Agreement.

3.3.9 Labor Code Compliance

The Port shall include in all subcontracts awarded using Project funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements, in the manner set forth in **Appendix A** (Required Contract Provisions).

3.3.10 Non-Discrimination Clause

3.3.10.1 In the performance of work under this Agreement, the Port, its contractor(s), and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and disability leave. The Port, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Port, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of the Port's contractors and all subcontractors shall give written notice of their obligations under this clause to labor

organizations with which they have a collective bargaining or other agreements, as appropriate.

3.3.10.2 Each of the Port's contractors, subcontractors, and/or subrecipients shall give written notice of their obligations under the non-discrimination clause to labor organizations with which they have collective bargaining or other labor agreements.

3.3.10.3 Should federal funds be constituted as part of Project funding or compensation received by the Port under a separate contract during the performance of this Agreement, the Port shall comply with this Agreement and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.

3.3.10.4 The Port shall include in all contracts with sub-recipients, contractors, subcontractors, and any other persons or entities performing work under the Agreement the non-discrimination and compliance provisions of this Section 3.3.10 (Non-Discrimination Clause) in the manner set forth in **Appendix A** (Required Contract Provisions).

3.3.10.5 The Port shall comply with the nondiscrimination program requirements of Title VI of the Civil Rights Act of 1964. Accordingly, 49 CFR 21 (Nondiscrimination in Federally-Assisted Programs of The Department Of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) and 23 CFR Part 200 (Title VI Program and Related Statutes—Implementation and Review Procedures) are made applicable to this Agreement by this reference. Wherever the term “Contractor” appears therein, it shall mean the Port.

3.3.10.6 To the extent applicable to the Program, each Project, and as permitted by law, the Port and its contractors, subcontractors, and subrecipients shall permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records to the State Department of Fair Employment and Housing, or any other agency of the State designated by CalSTA to investigate compliance with this clause.

3.3.11 **State Fire Marshal Building Standards Code**

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction,

means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, the Port shall request that the State Fire Marshal review Project plan, specification, and estimate to ensure Project consistency with State fire protection standards.

3.3.12 Access for Persons with Disabilities

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. The Port will award no construction contract unless the Port's plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

3.3.13 Disabled Veterans Program Requirements

3.3.13.1 Should Military and Veterans Code sections 999 et seq. be applicable to the Port, the Port will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or the Port's applicable higher goals) in the award of every contract for Project work to be performed under this Agreement.

3.3.13.2 The Port shall have the sole duty and authority under this Agreement and each Project Supplement to determine whether these referenced code sections are applicable to the Port or subrecipient (as applicable) and, if so, whether good faith efforts asserted by those contractors of the Port were sufficient as outlined in Military and Veterans Code sections 999 et seq.

3.3.14 Environmental Process

All funds expended under this Agreement shall, to the fullest extent applicable, comply with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). No funds shall be expended under this Agreement without appropriate documentation of compliance with or exemption from CEQA and/or NEPA, as applicable.

3.3.15 Force Majeure

Each Party and Caltrans will be excused from performance of its obligations where such non-performance is caused by any event beyond its reasonable

control, such as any non-appealable order, rule or regulation of any federal or state governmental body, fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, pandemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption, provided that the Party or Caltrans, as the case may be, excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

Should a force majeure event occur which renders it impossible or substantially infeasible for a period of forty-five (45) or more consecutive days for either Party and/or Caltrans to perform its obligations hereunder, the Parties agree to negotiate in good faith to amend the Agreement and/or Project Supplements to deal with such event and to seek additional sources of funding to continue the delivery of the Program and each Project.

3.3.16 California Executive Order N-6-22 (Russia Sanctions)

3.3.16.1 The Port confirms that it is in compliance with Executive Order 14065 issued by President Joseph R. Biden on February 21, 2022, as required by California Executive Order N-6-22. Within 30 days of the execution of this Baseline Agreement, the Port shall report to CalSTA regarding its compliance with economic sanctions as required by Executive Order 14065, as required by California Executive Order N-6-22.

3.3.16.2 With 30 days of the execution of this Baseline Agreement, the Port shall report to CalSTA the steps it has taken in response to Russia's actions in Ukraine, including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine.

4 MISCELLANEOUS PROVISIONS

4.1 Successor Acts

All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

4.2 Successor and Assigns to the Parties

Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any Party without the express written consent of the other Party.

4.3 Notice

Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addresses set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to CalSTA:

California State Transportation Agency
400 Capitol Mall, Suite 2340
Sacramento, CA 95814
Attention: Undersecretary

If given to Caltrans:

California Department of Transportation
Caltrans Local Assistance
1120 N Street
Sacramento, CA 95814
Attention: Cathy McKeon,
Chief, Office of State Programs, HQ

If given to the Port:

530 Water Street
Oakland, CA 94607
Attention: Executive Director

With a copy to:

530 Water Street
Oakland, CA 94607
Attention: Port Attorney

4.4 Amendment

This Agreement may not be changed, modified, or amended except in writing, signed by the Parties, and approved in advance in writing by CalSTA's Secretary,

and any attempt at oral modification of this Agreement shall be void and of no effect.

4.5 Representation and Warranties of the Parties

4.5.1 Port Representations and Warranties.

a. The Port is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to this Baseline Agreement.

b. The Port has the requisite power and authority to execute and deliver this Baseline Agreement and to carry out its obligations hereunder. The execution and delivery of this Baseline Agreement by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by the governing board of such entity and no other proceedings are necessary to authorize this Baseline Agreement or to consummate the transactions contemplated thereby. The Baseline Agreement has been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to the creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Baseline Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which the Port is a party; (ii) violate any writ, order, judgment, injunction, decrees, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

4.5.2 CalSTA Representations and Warranties.

a. It validly exists with all requisite power and authority to carry on the activities proposed to be conducted pursuant to this Baseline Agreement.

b. It has the requisite power and authority to execute and deliver this Baseline Agreement and to carry out its obligations thereunder. The execution and delivery of this Baseline Agreement, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings

are necessary to authorize this Baseline Agreement or to consummate the transactions contemplated thereby. The agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

c. Neither the execution and delivery of this Baseline Agreement and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement to which the Port is a party; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

4.6 Construction, Number, Gender and Captions

Numbers and gender as used herein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

4.7 Complete Agreement

This Baseline Agreement, including Appendices, constitutes the full and complete agreement of the Parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement. All attached Appendices are hereby incorporated and made an integral part of this Agreement by this reference.

4.8 Partial Invalidity

If any part of this Agreement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

4.9 Conflicts

To the extent that any provision of or requirement of this Baseline Agreement may conflict with a provision or requirement of a Project Supplement, the Baseline Agreement shall control.

4.10 Counterparts; Electronic Signatures

This Baseline Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Baseline Agreement may be used in lieu of the original. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Baseline Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

4.11 Governing Law

The Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers.

[SIGNATURES TO FOLLOW]

CALIFORNIA STATE TRANSPORTATION AGENCY

BY: *Toks Omishakin*
Toks Omishakin
Secretary

DATE
: Aug 4, 2022

PORT OF OAKLAND

BY: *Danny Wan*
Danny Wan (Jul 28, 2022 15:15 PDT)
Danny Wan
Executive Director

DATE
: Jul 28, 2022

APPROVED AS TO FORM AND PROCEDURE

CALIFORNIA STATE TRANSPORTATION AGENCY

BY: *Bret Ladine*
Bret Ladine
General Counsel

DATE
: Jul 28, 2022

PORT OF OAKLAND

BY: *Mary C. Richardson*
Mary C. Richardson
Port Attorney

DATE
: Jul 26, 2022

Port Reso No.: 22 - 81

PA #: 2022 - 370

APPENDIX A

REQUIRED CONTRACT PROVISIONS

The Port shall ensure that the following provisions (substantially and materially in the forms below) are included in all contracts and subcontracts to perform work under this Agreement. As used below, the term "Contractor" refers to all contractors and subcontractors performing work under this Agreement.

A. Audit and Cost Provisions

To the fullest extent applicable, Contractor shall comply with Title 2 Code of Federal Regulations Part 200 (2 CFR 200) Uniform Administrative Requirements, Cost Principles for State and Local Government, and Audit Requirements for Federal Awards.

Contractor shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project. The accounting system of contractors and all subcontractors shall conform to GAAP, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices.

For at least three (3) years from the date of final payment by CalSTA under a Project Supplement: (a) Contractor shall maintain all accounting records and other supporting papers ("Program Records"); (b) the Program Records shall be held open to inspection, copying, and audit by the California State Auditor, and, to the extent applicable or appropriate, other auditors representing the State or the federal government. Copies thereof will be furnished by Contractor upon receipt of any request made by State or its agents.

Travel and per diem reimbursements and third-party contract reimbursements will be allowable as Project costs only after those costs are incurred and paid for by Contractor.

B. Labor Code Compliance

Contractor shall comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of the contract award.

Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

C. Non-Discrimination Provisions

Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code § 12990 (a-f) and CCR, Title 2, Section 11102.)

Contractor assures that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

D. Contractor Name Change

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

E. Corporate Qualification to do Business in California

1. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
2. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
3. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

F. Air or Water Pollution Violation

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

PORT OF OAKLAND - CaISTA-Port of Oakland Baseline Agreement (2022 FINAL)

Final Audit Report

2022-08-05

Created:	2022-07-25
By:	Wise Hasseeb (whasseeb@portoakland.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAASnnu4jE3mb46i0k8pentF6x0GuTZKn2T

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-  Document created by Wise Hasseeb (whasseeb@portoakland.com)
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2022-07-27 - 2:07:30 PM GMT- IP address: 172.58.32.3
-  Document signing delegated to Danny Wan (dwan@portoakland.com) by Cheryl Ho (cho@portoakland.com)
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-  Document emailed to Bret Ladine (bret.ladine@calsta.ca.gov) for signature
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-  Document e-signed by Bret Ladine (bret.ladine@calsta.ca.gov)
Signature Date: 2022-07-29 - 2:19:06 AM GMT - Time Source: server- IP address: 149.136.17.253
-  Document emailed to Adetokunbo Omishakin (toks.omishakin@calsta.ca.gov) for signature
2022-07-29 - 2:19:09 AM GMT
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2022-08-05 - 1:00:36 AM GMT- IP address: 149.136.17.246
-  Document e-signed by Adetokunbo Omishakin (toks.omishakin@calsta.ca.gov)
Signature Date: 2022-08-05 - 1:00:48 AM GMT - Time Source: server- IP address: 149.136.17.246
-  Agreement completed.
2022-08-05 - 1:00:48 AM GMT

**REIMBURSEMENT AGREEMENT
PRELIMINARY ENGINEERING SERVICES**

Effective Date:

Agency: CITY OF OAKLAND, CALIFORNIA

Estimate: \$900,000.00

THIS REIMBURSEMENT AGREEMENT (**Agreement**) is made and entered into as of the **Effective Date**, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (**Railroad**), and AGENCY (**Agency**).

RECITALS

A. Agency desires to initiate the project more particularly described on Exhibit A attached hereto (**the Project**).

B. The Project will affect Railroad's track and right of way at or near the Project area more particularly described on Exhibit A.

C. Railroad agrees to collaborate with Agency on the conceptualization and development of the Project in accordance with the terms and conditions of this Agreement.

AGREEMENT

1. NOW THEREFORE, the parties hereto agree as follows:

2. Railroad, and/or its representatives, at Agency's sole cost and expense, agrees to perform (or shall cause a third-party consultant to perform on Railroad's behalf) the preliminary engineering services work described on Exhibit B attached hereto (**PE Work**). Agency acknowledges and agrees that: (a) Railroad's review of any Project designs, plans and/or specifications, as part of the PE Work, is limited exclusively to potential impacts on existing and future Railroad facilities and operations; (b) Railroad makes no representations or warranties as to the validity, accuracy, legal compliance or completeness of the PE Work; and (c) Agency's reliance on the PE Work is at Agency's own risk.

3. Notwithstanding the Estimate (**Estimate**), Agency agrees to reimburse Railroad and/or Railroad's third-party consultant, as applicable, for one hundred percent (100%) of all actual costs and expenses incurred for the PE Work. During the performance of the PE Work, Railroad will provide (and/or will cause its third-party consultant to provide) progressive billing to Agency based on actual costs in connection with the PE Work. Within sixty (60) days after completion of the PE Work, Railroad will submit (and/or will cause its third-party consultant to submit) a final billing to Agency for any balance owed for the PE Work. Agency shall pay Railroad (and/or its third-party consultant, as applicable) within thirty (30) days after Agency's receipt of any progressive and final bills submitted for the PE Work. Bills will be submitted to the Agency using the contact information provided on **Exhibit C**. Agency's obligation hereunder to reimburse Railroad (and/or its third-party consultant, as applicable) for the PE Work shall apply regardless if Agency declines to proceed with the Project or Railroad elects not to approve the Project.

4. Agency acknowledges and agrees that Railroad may withhold its approval for the Project for any reason in its sole discretion, including without limitation, impacts to Railroad's safety, facilities or operations. If Railroad approves the Project, Railroad will continue to work with Agency to develop final plans and specifications and prepare material and force cost estimates for any Project related work performed by Railroad.

5. If the Project is approved by Railroad, Railroad shall prepare and forward to Agency a Construction and Maintenance Agreement (**C&M Agreement**) which shall provide the terms and conditions for the construction and ongoing maintenance of the Project. Unless otherwise expressly set forth in the C&M Agreement, the construction and maintenance of the Project shall be at no cost to Railroad. No construction work on the Project affecting Railroad's property or operations shall commence until the C&M Agreement is finalized and executed by Agency and Railroad.

6. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

7. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties.

8. This Agreement sets forth the entire agreement between the parties regarding the Project and PE Work. To the extent that any terms or provisions of this Agreement regarding the PE Work are inconsistent with the terms or provisions set forth in any existing agreement related to the Project, such terms and provisions shall be deemed superseded by this Agreement to the extent of such inconsistency.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

CITY OF OAKLAND, CALIFORNIA

UNION PACIFIC RAILROAD COMPANY,
a Delaware Corporation

Signature

Signature

Printed Name

Peggy Ygbuhay
Printed Name

Title

Manager I, Engineering – Public Projects
Title

Exhibit A

Project Description and Location

Project Description

City of Oakland, CA proposes property development south of Railroad's tracks, including a waterfront baseball stadium, hotels, condominiums, retail shops, and construction of 2 new grade separated overpasses (DOT 980136R and DOT 980137X), with impact to the existing crossings referred to below.

Location

Niles Subdivision

DOT	Crossing Type	Milepost	Street Name
749580R	Public	6.195	Market Street
749581X	Public	6.38	Martin Luther King Way
749583L	Public	6.53	Clay Street
749584T	Public	6.60	Washington Street
749585A	Public	6.68	Broadway Street
749586G	Public	6.75	Franklin Street
749587N	Public	6.83	Webster Street
749591D	Public	7.2	Oak Street
980136R	Public	6.232	Brush Street OP
980137X	Pedestrian	6.455	Jefferson Street Pedestrian OP

Exhibit B

Scope of Project Services

Scope of work includes, but is not limited to the following

- Field diagnostic(s) and inspections
- Plan, specification and construction review
- Project design
- Preparation of Project estimate for force account or other work performed by the Railroad
- Meetings and travel

Exhibit C
Billing Contact Information

Name	Nicole Ferrara
Title	
Address	250 Frank H Ogawa Plaza, Oakland, CA, 94612
Work Phone	(510) 238-4720
Cell Phone	
Email	nferrara@oaklandca.gov
Agency Project No.	