

**STAFF REPORT FOR CALENDAR ITEM NO.: 13**  
**FOR THE MEETING OF: July 14, 2022**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute a Letter of Agreement (LOA) between the Transbay Joint Powers Authority (TJPA) and the Peninsula Corridor Joint Powers Board (“JPB” or “Caltrain”), describing the parties’ cooperation to complete all work needed to meet critical milestones in the Downtown Rail Extension (DTX) Accelerated Work Plan and documentation requirements related to the Full Funding Grant Agreement (FFGA) request, and reimbursement from TJPA to Caltrain for such efforts in an amount not to exceed \$437,000 in FY21-22, and \$2,883,000 in FY22-23, while the parties negotiate a longer term Master Cooperative Agreement (MCA).

**EXPLANATION:**

As part of the Federal Transit Administration (FTA) Capital Investment Grants (CIG) Program, and before completion of the Engineering Phase in August 2023, FTA requires that TJPA, as Project Sponsor, complete and secure all critical third party agreements that are necessary to facilitate the financing, design, permitting, construction, and operation and maintenance of a federally funded capital transit project. TJPA is actively engaged with the necessary third parties to timely secure the required agreements.

In particular, TJPA and Caltrain are developing a Master Cooperative Agreement (MCA) to be included in the TJPA’s August 2023 application for the CIG. The MCA is expected to address key topics, such as funding of Caltrain CIG-eligible costs, design support and coordination, right of way, temporary encroachment, permitting, procurement and construction coordination, operations maintenance and rehabilitation, and asset disposition.

In the interim period before the MCA can be fully negotiated and presented to the agencies’ boards for approval, the TJPA requires information sharing, design and operational input, and other coordination with the JPB to ensure the TJPA meets critical milestones in the accelerated work plan and documentation requirements of the FFGA. Caltrain has incurred consultant costs in FY 21-22 in support of this effort beyond its role on the Executive Steering Committee (ESC) and support on the Integrated Project Management Team (IPMT). Due to its unique project development related responsibilities as lead transit rail operator, Caltrain has incurred an estimated \$437,000 in consultant costs since DTX’s acceptance into the FTA CIG Program in December 2021. Similarly, in FY 22-23 Caltrain anticipates it will incur an additional \$2.883M, in agency staff and consultant costs in support of DTX. Costs incurred in support of advancing DTX in the CIG program are considered eligible local share to the grant.

TJPA and Caltrain have negotiated a Letter of Agreement (LOA), enclosed herewith, describing the parties’ cooperation to complete all work needed to meet critical milestones in the DTX Accelerated Work Plan and CIG documentation, and authorizing reimbursement from TJPA to Caltrain for such efforts, while the parties negotiate a longer-term MCA.

For the FY 21-22 reimbursement obligation under the LOA, TJPA has adequate remaining capacity in the FY 21-22 budget for such costs. Last month, Caltrain's Board of Directors included in its FY 22-23 budget \$1.5M capital contribution from Caltrain towards DTX program costs, which the parties propose to use as an offset to Caltrain's FY 22-23 incurred costs in support of DTX. Unexpended funds from the 2022 CFD Bond proceeds will be used for the balance of the reimbursement for FY 22-23.

Staff continues to work with Caltrain in development of the MCA and expects to bring the item before the Board in the Spring of 2023.

**RECOMMENDATION:**

Staff recommends that the Board authorize the Executive Director to execute an LOA in the form attached, authorizing reimbursement from TJPA to Caltrain for efforts to advance DTX in an amount not to exceed \$437,000 in FY21-22, and \$2,883,000 in FY22-23.

**ATTACHMENTS:**

1. Resolution
2. Letter of Agreement

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to state law and the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has primary jurisdiction over and will implement all aspects of the Transbay Program, including the portion of the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project commonly referred to as Phase 2/Downtown Rail Extension (DTX); and

WHEREAS, The TJPA is actively engaged in developing the DTX; and

WHEREAS, As part of the Federal Transit Administration (FTA) Capital Investment Grants (CIG) Program, and before completion of the Engineering Phase in August 2023, FTA requires that TJPA, as Project Sponsor, complete and secure all critical third party agreements that are necessary to facilitate the financing, design, permitting, construction, and operation and maintenance of a federally funded capital transit project; and

WHEREAS, In furtherance of FTA's requirement, TJPA and the Peninsula Corridor Joint Powers Board (JPB or Caltrain) are developing a Master Cooperative Agreement (MCA), which is expected to address key topics, such as funding of Caltrain CIG-eligible costs, design support and coordination, right of way, temporary encroachment, permitting, procurement and construction coordination, operations maintenance and rehabilitation, and asset disposition; and

WHEREAS, In the interim period before the MCA can be fully negotiated and presented to the agencies' Boards for approval, the TJPA requires information sharing, design and operational input, and other coordination with the JPB to ensure the TJPA meets critical milestones in the accelerated work plan and documentation requirements of the Full Funding Grant Agreement; and

WHEREAS, Caltrain is willing to provide such support to TJPA to advance the DTX, but requires reimbursement of certain costs incurred; and

WHEREAS, TJPA and Caltrain have negotiated a Letter of Agreement (LOA), presented herewith, describing the parties' cooperation, and authorizing reimbursement from TJPA to Caltrain for such efforts, while the parties negotiate a longer-term MCA; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorize the Executive Director to execute the LOA between the TJPA and Caltrain, in the form presented, describing the parties' cooperation, and authorizing reimbursement from TJPA to Caltrain for such efforts in an amount not to exceed \$437,000 in FY21-22, and \$2,883,000 in FY22-23, while the parties negotiate a longer-term MCA.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 14, 2022.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

[TJPA letterhead]

[Date]

Michelle Bouchard  
Peninsula Corridor Joint Powers Board  
1250 San Carlos Avenue  
San Carlos, CA 94070

**Subject: Letter of Agreement Regarding Reimbursement for Activities Undertaken in Support of the Downtown Rail Extension**

Dear Ms. Bouchard:

Through this Letter of Agreement (“LOA”) by and between the Peninsula Corridor Joint Powers Board (“JPB” or “Caltrain”) and the Transbay Joint Powers Authority (“TJPA” and, together with the JPB, the “Parties”), the Parties hereby agree to the mutually agreed upon activities and sharing of costs to jointly advance the Downtown Rail Extension (“DTX” or the “Project”), consistent with the April 2020 San Francisco Peninsula Rail Program Memorandum of Understanding, including *Paragraph 9, Principles for Collaboration*, and *Attachment 2: DTX Summary Work Program*.

The Parties’ intent is to complete an agreement between the TJPA and the JPB known as a Master Cooperative Agreement (“MCA”) and the Parties agree that this LOA will be superseded by the MCA when executed.

**RECITALS**

**Whereas**, the TJPA, the Metropolitan Transportation Commission (MTC), the San Francisco County Transportation Authority (SFCTA), the JPB, the California High Speed Rail Authority (CHSRA), and the City and County of San Francisco (CCSF) have entered into the San Francisco Peninsula Rail Program Memorandum of Understanding (MoU) to support the efforts of the TJPA in development of DTX to a Ready-for-Procurement Status; and

**Whereas**, the parties to the MoU recognize that DTX is a critical rail link in the Bay Area, mega-region, and state transportation system and that it will be more efficiently and effectively developed through a multi-agency partnership among local, regional, and state stakeholder agencies with expertise in developing, funding, and implementing major infrastructure projects; and

**Whereas**, the MoU commits the parties to participation in the process outlined in the MoU, but does not constitute a commitment of financial resources, and the parties acknowledged that they would need to work together to identify the necessary resources to support their respective activities to carry out the DTX work program; and

**Whereas**, the TJPA, as project sponsor, and the JPB, as rail operator and partner, have a unique relationship to the Project and each other, and the TJPA and the JPB are developing an MCA, which the Federal Transit Administration requires to be included in the TJPA's application for the Capital Investment Grants Program (CIG); and

**Whereas**, as contemplated by the MoU, the TJPA, in cooperation with the parties to the MoU, has developed an Accelerated Comprehensive Work Plan (Accelerated Work Plan), leading to the August 2023 submittal of a Full Funding Grant Agreement (FFGA) request to FTA and the Accelerated Work Plan identifies certain tasks and activities that must occur prior to submission of the FFGA request; and

**Whereas**, in the interim period before the MCA can be presented to the agencies' boards for approval, the TJPA requires information sharing, design and operational input, and other coordination with the JPB to ensure the TJPA meets critical milestones in the Accelerated Work Plan and documentation requirements of the FFGA; and

**Whereas**, the JPB is committed to supporting the TJPA in the implementation of the Accelerated Work Plan and the TJPA has certain limited resources to reimburse Caltrain for certain of its staff and consultant costs in support of these activities; and

**Whereas**, the TJPA receives federal, state, and local funding and all reimbursements contemplated in this LOA must meet certain federal and state requirements; and

**Whereas**, to the extent the Parties reach agreements in the LOA related to work required in the interim period before the MCA can be completed, such agreements are not binding on the Parties in their negotiations concerning the MCA; and

**Now, therefore**, the TJPA and the JPB have agreed to enter into this Letter of Agreement to describe the terms and conditions for their cooperation in the interim period before the MCA is fully negotiated and executed and hereby agree as follows:

## **1. Term**

This LOA is effective as of December 3, 2021 and will terminate upon the earliest of: (a) the execution of the MCA between the parties, (b) termination by either Party pursuant to Section 4 or (c) by March 31, 2023, subject to a one-time extension of up to five months with the mutual agreement of the Parties.

## **2. Scope of Cooperation**

The Parties will cooperate to complete all work needed to meet critical milestones in the Accelerated Work Plan and documentation requirements prior to submission of the FFGA request.

### **3. Budget and Invoicing**

- (a) TJPA will reimburse the JPB for 100% of its reasonable and actual consultant costs for the Project for Fiscal Year 2022 (FY22) in the amount of up to \$436,545 inclusive of the Indirect Cost Allocation Plan at a rate of 3.45%.<sup>1</sup> More detail regarding the breakdown of JPB's estimated costs is included in Exhibit A. The JPB will absorb all staff costs expended on the project in FY22. (For the avoidance of doubt, such amount is separate from and in addition to the up to \$260,000 funding JPB is entitled to receive under the DTX Rail Program Operations Analysis Memorandum of Agreement between TJPA and JPB dated February 11, 2021.)
- (b) TJPA will reimburse the JPB for 100% of its reasonable and actual applicable staff and consultant costs for the Project for Fiscal Year 2023 (FY23) in the amount of up to \$2,883,000. More detail regarding the breakdown of JPB's estimated costs is included in Exhibit B. Amounts and invoices for reimbursement will include Indirect Cost Allocation Plan (ICAP) at a rate of 3.89 percent (FY23 rate).
- (c) The JPB has planned a \$1,500,000 capital contribution to the TJPA for the Project in FY23 and TJPA has identified \$200,000 in other sources for JPB reimbursement for FY23, for a total of \$1,700,000. Without regard to actual source of funds, TJPA will draw down on the amount of \$1,700,000 to reimburse the JPB. Any additional costs above \$1,700,000 for eligible JPB staff and consultant costs for FY23 (up to \$2,883,000 total in FY23) will be reimbursed by TJPA from other sources. Within 90 days of the JPB incurring \$1,000,000 of total costs in FY23, TJPA shall identify for JPB the planned source and timing of additional funds to cover costs in excess of \$1,700,000.
- (d) JPB will not seek reimbursement for staff participation in Executive Steering Committee (ESC) or Integrated Program Management Team (IPMT) meetings.
- (e) JPB will invoice TJPA monthly, providing invoices with auditable documentation for Caltrain staff hours and consultant costs, as further described in Exhibit C.
- (f) The Parties will work together to establish assumptions and estimates for subsequent budget years to ensure that budget development includes Caltrain staff and consultant costs; the Parties' obligations to incur and reimburse such costs, however, require approval of the Parties' respective legislative bodies, each in their sole discretion.

### **4. Termination**

- (a) Either party may at any time terminate this LOA by giving thirty (30) days written notice to the other party, including for default by the other party or for convenience.
- (b) Within sixty (60) days of receipt of the notice of termination, the JPB will submit any outstanding invoices for costs incurred prior to termination to TJPA and the TJPA will

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<sup>1</sup> The ICAP rate is used to recover two components: (1) administrative overhead costs related to shared services support provided by the San Mateo County Transit District, the managing agency of the JPB, and (2) the capital overhead support costs related to the JPB capital program. The ICAP rate is updated on an annual basis.

use best efforts to reimburse the JPB for costs incurred consistent with this LOA within forty-five (45) days of receipt.

## **5. Notices**

All notices, payments, requests, demands, and other communications to be made or given under the LOA shall be in writing and shall be deemed to have been duly served given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first-class mail:

JPB: Peninsula Corridor Joint Powers Board  
1250 San Carlos Avenue  
San Carlos, CA 94070  
Attn: Executive Director

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

In addition to the written notice required above, the Parties agree to provide courtesy notice by email.

## **6. Indemnification**

- a) The JPB shall indemnify, defend, and hold harmless the TJPA, its Board of Directors, representatives, agents, or employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the JPB, its officers, employees or agents, including any consultant retained by the JPB, in connection with this LOA, except those arising by reason of the negligence, recklessness, or willful misconduct of the TJPA, its officers, employees and agents.
- b) The TJPA shall indemnify, defend, and hold harmless the JPB, its Board of Directors, representatives, agents or employees from and against all claims, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the TJPA, its officers, employees or agents in connection with this LOA, except those arising by reason of the negligence, recklessness, or willful misconduct of the JPB, its officers, employees and agents.
- c) The foregoing provisions regarding indemnification are included pursuant to the provisions of Section 895.4 of the Government Code and are intended by the

parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of the Government Code.

## **7. Governing Law**

This LOA shall be interpreted, construed, and enforced in accordance with the laws of California.

## **8. Amendments**

This LOA may be amended at any time and from time to time, provided such amendments are in writing and executed by the Parties.

## **9. Entire Agreement**

This LOA constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any prior oral or written understanding on the same subject.

## **10. Audit and Inspection of Records**

The JPB agrees to maintain and make available to the TJPA, during regular business hours, accurate books and accounting records relating to its work under this LOA. The JPB will permit the TJPA to audit, examine, and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to work under this LOA. The JPB shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years after the JPB receives final payment from the TJPA. The State of California or any federal agency having an interest in the subject matter of this LOA shall have the same rights conferred upon the TJPA by this section.

## **11. Electronic Signature**

Unless otherwise prohibited by law or policy, the Parties agree that an electronic copy of this agreement, or an electronically signed agreement, has the same force and legal effect as the agreement executed with an original ink signature. The term "electronic copy of this agreement" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term "electronically signed agreement" means the agreement that is executed by applying an electronic signature using technology approved by the TJPA.



In witness whereof the Parties have signed this Letter of Agreement on the date first written above with the intent to be legally bound.

TRANSBAY JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Adam Van de Water  
Executive Director

Approved as to form by:

By: \_\_\_\_\_  
Deborah Miller  
General Counsel, TJPA

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

\_\_\_\_\_  
Secretary, TJPA Board

PENINSULA CORRIDOR JOINT POWERS BOARD

By: \_\_\_\_\_  
Michelle Bouchard  
Acting Executive Director, JPB

Approved as to form by:

By: \_\_\_\_\_  
James Harrison  
General Counsel, JPB

Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, JPB Board

Exhibit A  
San Francisco Downtown Extension Project  
Estimated Caltrain Costs for FY22

Caltrain Staff FY22 costs are estimated based on actual salary costs by Grade, to which Fringe benefits and ICAP (see attachment) are added. Projected FY22 consultant costs, plus ICAP are added to Caltrain Staff FY22 costs. Hours for attending IPMT and ESC meetings are excluded.

Estimated Caltrain Staff (FY22) DTX Costs

Title	Estimated hours
Administrative Support	
CAD Technician	
Jr. Engineer	199
Sr. Engineer	44
Manager	219
Manager/Principal Engineer	146
Deputy Director	510
Director	1,578
Deputy Chief	40
Chief	
<b>Total Caltrain Staff Estimated Hours*</b>	<b>2,736</b>
<b>Total Caltrain Staff Estimated Costs</b>	<b>\$350,000</b>

\*Represents 3.3 FTEs (split across ~15 staff) across Caltrain – this is a conservative number and does not include all people who did work on DTX this fiscal year, but represents those hours that can be clearly allocated to the project

Estimated Caltrain Consultants (FY22) DTX Costs

Name	Title of Scope	Budget	ICAP multiplier	Total cost
<b>HNTB Team</b>	Strategic advising; planning support	\$350,000	0.0345	\$ 362,075
<b>DB Consulting</b>	Rail operations analysis	\$21,000	0.0345	\$ 21,725
<b>Olson Remcho</b>	Legal advising	\$10,000	0.0345	\$ 10,345
			<b>Total</b>	\$ 394,145
Estimated additional for June 2022				\$42,400
			<b>Total</b>	<b>\$436,545</b>

Estimated Total Caltrain FY22 DTX Costs

Caltrain Staff	\$350,000
Caltrain Consultants	\$436,545
<b>TOTAL CALTRAIN FY22 DTX COSTS</b>	<b>\$ 786,545</b>

Exhibit B  
San Francisco Downtown Extension Project  
Estimated Caltrain Costs for FY23

Caltrain Staff FY23 costs are estimated based on actual salary costs by Grade, to which Fringe benefits and ICAP (see attachment) are added. Projected FY23 consultant costs, plus ICAP are added to Caltrain Staff FY23 costs, plus a contingency to reflect uncertainty about the work to be completed. Hours for attending IPMT and ESC are excluded.

Estimated Caltrain Staff (FY23) DTX Costs

Title	Estimated hours
Administrative Support	333
CAD Technician	333
Jr. Engineer	1,082
Sr. Engineer	4,077
Manager	2,122
Manager/Principal Engineer	582
Deputy Director	1,469
Director	2,275
Deputy Chief	390
Chief	36
<b>Total Caltrain Staff Estimated Hours*</b>	12,699
<b>Total Caltrain Staff Estimated Costs</b>	\$1.4M

\*Represents 7.6 FTEs (split across ~60 staff) across Caltrain

Estimated Caltrain Consultants (FY23) DTX Costs

Name	Title of Scope	Budget	ICAP multiplier	Total cost
<b>HNTB Team</b>	Strategic advising; planning support	<b>\$900,000</b>	0.0389	\$935,010.00
<b>DB Consulting</b>	Rail operations analysis	<b>\$100,000</b>	0.0389	\$103,890
<b>Olson Remcho</b>	Legal advising	<b>\$65,000</b>	0.0389	\$67,529
			<b>Total</b>	<b>\$1,106,429</b>

Estimated Total Caltrain FY23 DTX Costs

Caltrain Staff	\$1,400,000
Caltrain Consultants	\$1,106,429
Contingency (15%)	\$ 375,964
<b>TOTAL ESTIMATED CALTRAIN FY23 DTX COSTS</b>	<b>\$2,882,393</b>

Exhibit C  
Invoices

Rates: The TJPA shall reimburse the JPB at hourly labor rates for staff and consultant costs. JPB will provide TJPA with a schedule of hourly labor rates at the beginning of the fiscal year and will provide updates to the rate schedule in advance of any changes.

Invoice: The JPB will bill the TJPA on a cost reimbursable basis. Invoices furnished by the JPB must be in a form reasonably acceptable to the TJPA. The JPB shall submit invoices monthly to the TJPA. Notwithstanding the foregoing, all invoices for work in a Fiscal Year must be received by the TJPA within the period of time after the close of the Fiscal Year specified by the TJPA; for Fiscal Year 2021-2022, the deadline for receipt of invoices is July 15, 2022. The TJPA shall make a good faith effort to pay all undisputed amounts within forty-five (45) days following receipt of a proper invoice from the JPB. In no event shall the TJPA be liable for interest or late charges for any payments made after this time period. To the extent the TJPA disputes any invoice, the Parties shall meet and confer in a good faith effort to resolve the dispute.