

**STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: March 9, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to enter Amendment 2 to the Letter of Agreement (LOA) between the Transbay Joint Powers Authority (TJPA) and the Peninsula Corridor Joint Powers Board (JPB or Caltrain), dated July 14, 2022, as once amended, extending the term by five months with no change in the maximum compensation.

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 Full Funding Grant Agreement.

On July 14, 2022, the TJPA Board approved an LOA with Caltrain, 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. The not to exceed budget under the original LOA was about \$787,000 in FY 21-22 and \$2,883,000 in FY 22-23. In March 2023, consistent with the TJPA Board Procurement Policy, the TJPA Executive Director entered an Amendment 1 to the LOA, increasing the not to exceed budget for FY 22-23 to about \$3,083,000. The LOA is scheduled to terminate no later than March 31, 2023. The LOA provides an option to extend the term up to five months based on the mutual agreement of the parties.

TJPA and Caltrain are continuing to concurrently negotiate the MCA while working cooperatively to advance key milestones in the Accelerated Work Plan and CIG documentation. Staff expects to bring a recommended MCA before the Board in the Summer of 2023. Staff believe TJPA would benefit from exercising the contemplated extension of the term of the LOA by five months (through August 31, 2023) to allow project work to continue on schedule until MCA negotiations are complete.

Through December 2022, Caltrain invoiced TJPA for FY 22-23 expenditures a total of \$786,616.41, significantly underspending the maximum budget. Remaining funds are anticipated to be sufficient for the balance of the LOA term, including the proposed extension. Thus, staff is not proposing any change in the maximum compensation under the LOA.

Caltrain and TJPA staff have agreed that this path to exercising the option to extend for up to five months with no additional budget is the preferred path forward to continuing to reimburse Caltrain for their time and effort on behalf of DTX while the MCA is in negotiation. TJPA has negotiated the attached Amendment 2 to the LOA.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to enter Amendment 2 to the LOA with Caltrain, in the form presented, extending the term by five months with no change in the maximum compensation.

ATTACHMENTS:

1. Resolution
2. Amendment 2 to 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, On July 14, 2022, the TJPA Board approved a Letter of Agreement (LOA) with Caltrain, describing the parties' cooperation, and authorizing reimbursement from TJPA to Caltrain for such efforts, while the parties negotiate a longer-term MCA; and

WHEREAS, In March 2023, the TJPA Executive Director entered Amendment 1 to the LOA, consistent with the TJPA Board Procurement Policy, increasing the not to exceed budget for FY 22-23 to about \$3,083,000; and

WHEREAS, The LOA provides an option to extend the term for up to five months with mutual agreement of the Parties; and

WHEREAS, Staff believe TJPA would benefit from exercising the contemplated extension of the term of the LOA to allow project work to continue on schedule until MCA negotiations are complete; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to enter Amendment 2 to the LOA between the TJPA and Caltrain, in the form presented, to extend the term of the LOA by five months, with no change in the maximum compensation under the LOA, 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 March 9, 2023.

Secretary, Transbay Joint Powers Authority

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

Subject: Amendment #2 to Letter of Agreement Regarding Reimbursement for Activities Undertaken in Support of the Downtown Rail Extension Project

Dear Ms. Bouchard:

The purpose of this letter is to confirm the terms for Amendment #2 to the July 14, 2022 Letter of Agreement 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”), as once previously amended (together, the “LOA”).

TJPA and Caltrain are continuing to concurrently negotiate a Master Cooperative Agreement (“MCA”) while working cooperatively to advance key milestones in the Accelerated Work Plan and CIG documentation. The Parties expect to bring a recommended MCA before their respective boards in the Summer of 2023. Accordingly, the Parties believe they would benefit from exercising the contemplated five-month extension of the term of the LOA to allow project work to continue on schedule until MCA negotiations are complete. Specifically, the Parties agree to amend the following sections of the LOA in their entirety to read as follows:

I. Section 1 of the LOA is hereby modified as follows:

This LOA is effective as of December 3, 2021 and will terminate upon the earliest of: (1) the execution of the MCA between the parties; (b) termination by either Party pursuant to Section 4; or (c) ~~by August 31, 2023 March 31, 2023, subject to a one-time extension of up to five months with the mutual agreement of the Parties.~~

II. All references in Section 3(b) of LOA and subsequently throughout the LOA to the budget for Fiscal Year 2023 (FY23) shall mean the budget for the period from July 1, 2022 through August 31, 2023.

The LOA is amended only to the extent expressly provided herein; all other provisions of the LOA shall remain in full force and effect.

The individuals executing this Amendment #2 to the LOA represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

In witness whereof the Parties have signed this Amendment #2 to the LOA 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
Legal Counsel, TJPA

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

Secretary, TJPA Board

PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____
Michelle Bouchard
Executive Director

Approved as to Form by:

By: _____
James Harrison
General Counsel, JPB