

## San Francisco Peninsula Rail Program

### Memorandum

To: Executive Steering Committee

From: Stephen Wolf, Metropolitan Transportation Commission  
Jesse Koehler, San Francisco County Transportation Authority

Date: March 17, 2023

Re: Item 5 – Discussion to amend the San Francisco Peninsula Rail Program Memorandum of Understanding from its current end date of June 5, 2023 to December 31, 2023

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### BACKGROUND

The San Francisco Peninsula Rail Program Memorandum of Understanding (MOU) describes, in part, an organizational structure to support the efforts of the TJPA to develop the Downtown Rail Extension (DTX or The Portal) project. This organizational structure includes the Executive Steering Committee (ESC) and the Integrated Program Management Team (IPMT). The MOU is a six-party agreement among the TJPA, the Peninsula Corridor Joint Powers Board (Caltrain), the California High-Speed Rail Authority (CHSRA), the City and County of San Francisco (CCSF), the Metropolitan Transportation Commission (MTC), and the San Francisco County Transportation Authority (SFCTA). The MOU defines a work program intended to bring the project to ready-for-procurement status.

The MOU came into effect on June 5, 2020, upon completion of execution by all six parties. The term of the MOU is three years or upon completion of the MOU's procurement-readiness work program – whichever is earlier. Section 13.2 of the MOU specifies that "The Partners may amend, conclude, or extend this MOU by mutual agreement; such agreement shall be evidenced in writing."

The MOU is due to expire on June 5, 2023, consistent with its conditions concerning term. This memorandum discusses implications of the MOU's conclusion and seeks guidance from the ESC to address these considerations.

### DISCUSSION

#### MOU Work Program

The MOU defines "Ready-for-Procurement" as follows:

*All work in planning and engineering is advanced to a level consistent with the contract(s) delivery method(s), has completed all required planning and National Environmental Policy Act/California Environmental Quality Act, and applicable other permit/approval requirements, has secured necessary funding, has obtained or identified Right-of-Way and/or easements and permits, and is ready to proceed to bid.*

Significant progress has been made in advancing the procurement-readiness work program since establishment of the MOU. Work program activities that have been completed or substantially

advanced, include, among other tasks: preliminary design; re-branding; operational analysis; phasing strategy; industry soundings and project delivery method; updates to capital and operating cost estimates and funding plans; and the initial 20-year financial plan.

The procurement-readiness work program, while significantly complete, will take longer to conclude than the 36-month period originally provided for. MOU tasks/sub-tasks that remain in progress include: updated funding plans for construction and operations (Task 13); final project delivery strategy, including procurement plan (Task 16); operations and maintenance (O&M) planning, including ownership/governance of project elements and agreements for O&M (Task 17); final recommendations for governance arrangement through construction (Task 18) and implementation of these recommendations (Task 19); and draft bid documents for each contract (Task 20).

### Governance Study

The SFCTA and MTC are currently co-leading the DTX Governance Study, in order to recommend the institutional arrangement and governance structure through construction of the project, as described in the MOU. In September 2022, the TJPA Board approved a set of ten Governance Study recommendations, as recommended by the ESC. The five primary recommendations are:

1. Confirm TJPA as lead agency for procurement/construction and continue to develop the capacity of TJPA and partner agencies for project delivery;
2. Develop a collaborative, integrated management approach and core management team to support TJPA, align direction to the multi-agency delivery team, and actively manage risks and challenges;
3. Provide a transparent venue for the development and review of policy-level recommendations and reporting to the TJPA Board;
4. Utilize a stage gate process to align decision-making at major milestones and to ensure readiness for successive phases of work; and
5. Define and codify the delivery-phase governance and management structure through bi-lateral agreements, a successor to the MOU, and detailed management plans.

The SFCTA and MTC, in consultation with the IPMT, are currently preparing the final Governance Study deliverable, referred to as the DTX Governance Study Blueprint, which will recommend the more detailed governance approach for procurement and construction of the project, including the recommended components of a successor to the current MOU.

An informational update on the draft structure for the Governance Study Blueprint will be provided to the ESC through a separate item on the March 17, 2023, meeting agenda. The Blueprint is scheduled to be considered by the ESC in April 2023, for recommendation to the TJPA Board for its consideration in May 2023. Subsequent to approval of the Blueprint by the TJPA Board, a successor to the existing MOU would be developed and negotiated among the DTX partner agencies, with the target of completing this process by the end of 2023. This timeline could be accommodated by extension of the term of the existing MOU through this period.

### Extension of the Current MOU

At the March 9, 2023, meeting of the TJPA Board, Director Chang (sitting as Alternate for Vice Chair Mandelman) requested, on the Vice Chair's behalf, that an item be agendaized for the TJPA Board's next meeting, to extend the current MOU to December 31, 2023. A draft of a term-only amendment to the

MOU is provided as Attachment 1 to this memorandum. Such an amendment would be limited to extension of term, with no modifications to scope or to other provisions of the MOU.

To complete such an amendment, each signatory agency would pursue its own required process for execution. In some cases, Board-level authorization or approval may be required. In other cases, the agency's signatory may have existing authority to execute an amendment to extend the MOU's term.

### **NEXT STEPS**

This is an information item. We are seeking input and guidance from the ESC regarding:

1. Extension of the existing MOU to December 31, 2023;
2. Each signatory agency's required process to approve/complete execution of such an amendment;  
and
3. Anticipated timelines for approval/execution.

### **ATTACHMENT**

1. MOU Amendment No. 1 – Draft

**AMENDMENT NO. 1**  
**To MEMORANDUM OF UNDERSTANDING**  
**Between**  
**TRANSBAY JOINT POWERS AUTHORITY,**  
**METROPOLITAN TRANSPORTATION COMMISSION,**  
**SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY,**  
**PENINSULA CORRIDOR JOINT POWERS BOARD,**  
**CALIFORNIA HIGH SPEED RAIL AUTHORITY,**  
**And**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**For the**  
**SAN FRANCISCO PENINSULA RAIL PROGRAM**

This AMENDMENT effective June 5, 2023, is Amendment No. 1 to the MEMORANDUM OF UNDERSTANDING between the Transbay Joint Powers Authority (TJPA); the Metropolitan Transportation Commission (MTC); the San Francisco County Transportation Authority (SFCTA); the Peninsula Corridor Joint Powers Board (Caltrain); the California High Speed Rail Authority (CHSRA); and the City and County of San Francisco (CCSF) (each a “Partner” and collectively the “Partners”), dated June 5, 2020 (the “Agreement”).

NOW, THEREFORE, the parties agree to modify the subject Agreement as follows:

1. Article 13, *Term*, is revised in part to extend the term of the Agreement to December 31, 2023.
2. Retention of Contract Provisions. Except as provided herein, all other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, this Agreement has been executed by the PARTIES hereto on the day and year first above written.

**TRANSBAY JOINT POWERS  
AUTHORITY**

By: \_\_\_\_\_

TJPA Board Chair

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**METROPOLITAN  
TRANSPORTATION COMMISSION**

By: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**SAN FRANCISCO COUNTY  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**PENINSULA CORRIDOR JOINT  
POWERS BOARD**

By: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**CALIFORNIA HIGH SPEED RAIL  
AUTHORITY**

By: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY AND COUNTY OF SAN  
FRANCISCO**

By: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_