

**STAFF REPORT FOR CALENDAR ITEM NO.: 14
FOR THE MEETING OF: May 11, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Consider authorizing the Board Chair to execute the first amendment to the San Francisco Peninsula Rail Program Memorandum of Understanding to extend the term of the agreement to December 31, 2023.

EXPLANATION:

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 project (DTX, now known as The Portal). 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 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). The MOU defines a work program intended to bring the project to ready-for-procurement status.

On April 9, 2020, the TJPA Board authorized the TJPA Board Chair to execute the MOU. 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 when the DTX reaches Ready-for-Procurement status – 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 recommends that the Board consider authorizing the Board Chair to execute the first amendment to the MOU to extend the term of the agreement to December 31, 2023.

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 the establishment of the MOU. Work program activities that have been completed or substantially advanced, include, among other tasks: establishment of the ESC and IPMT (Task 1 and 2); recruitment of the Program Director (Task 3); comprehensive Work Plan (Task 6); re-branding (Task 7); operational analysis (Task 9); preliminary design (Task 11); updates to capital and operating cost estimates and funding plans (Task 11 and 13); phasing strategy (Task 12); the initial 20-year financial plan (Task 13); preparation to enter New Starts Program (Task 14); industry soundings (Task 15); and project delivery method (Task 16).

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 are not yet complete include: updated funding plans for construction and operations (Task 13 – SFCTA lead); final project delivery strategy, including procurement plan (Task 16 – SFCTA and TJPA co-lead); operations and maintenance (O&M) planning, including ownership/governance of project elements and agreements for O&M (Task 17 – TJPA lead); final recommendations for governance arrangement through construction (Task 18 – MTC and SFCTA co-lead) and implementation of these recommendations (Task 19 – TJPA lead); and draft bid documents for each contract (Task 20 – TJPA lead).

Governance Study

SFCTA and MTC are currently co-leading the DTX Governance Study, in order to recommend to the TJPA Board 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.

SFCTA and MTC, in cooperation with the IPMT and ESC, 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 preparation of the Governance Study Blueprint was presented to the ESC on April 21, 2023. The Blueprint is scheduled to be considered by the ESC in May 2023, for recommendation to the TJPA Board for its consideration in June 2023. Subsequent to approval of the Blueprint by the TJPA Board, SFCTA and MTC will co-lead the development of a successor to the existing MOU, the terms of which will be negotiated among the DTX partner agencies, with the target of completing this process by the end of 2023. This timeline will be accommodated by extension of the term of the existing MOU through December 31, 2023.

Extension of the Current MOU

A draft of a time-only amendment to the MOU is provided as Attachment 2 to this memorandum. The amendment is limited to extension of term through December 31, 2023, with no modifications to scope or to other provisions of the MOU.

On March 17, 2023, the ESC considered the topic of the MOU's extension and discussed agency processes to execute such an amendment. TJPA Board authorization is required for the TJPA Board Chair to execute the proposed amendment, consistent with the April 2020 action to originally authorize the MOU, as discussed above. Each agency will undertake its own internal review and approval processes as required. The other signatory agencies plan to execute the amendment prior to the MOU's current expiration date of June 5, 2023.

RECOMMENDATION:

Consider authorizing the Board Chair to execute the first amendment to the San Francisco Peninsula Rail Program MOU, in the form enclosed herewith, to extend the term of the agreement to December 31, 2023.

ATTACHMENTS:

1. Resolution
2. San Francisco Peninsula Rail Program Memorandum of Understanding Amendment No. 1

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

RESOLVED, That the TJPA Board of Directors authorizes the Board Chair to execute an amendment to the June 5, 2020 San Francisco Peninsula Rail Program Memorandum of Understanding with the Metropolitan Transportation Commission, the San Francisco County Transportation Authority, the Peninsula Corridor Joint Powers Board (Caltrain), the California High Speed Rail Authority, and the City and County of San Francisco (Mayor's Office), extending the term through December 31, 2023 and with no other changes, in the form presented to the TJPA Board and on file with the Secretary of the Board.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of May 11, 2023.

Secretary, Transbay Joint Powers Authority

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: _____

**SAN FRANCISCO COUNTY
TRANSPORTATION AUTHORITY**

By: _____

Address:

Date: _____

**CALIFORNIA HIGH SPEED RAIL
AUTHORITY**

By: _____

Address:

Date: _____

**METROPOLITAN
TRANSPORTATION COMMISSION**

By: _____

Address:

Date: _____

**PENINSULA CORRIDOR JOINT
POWERS BOARD**

By: _____

Address:

Date: _____

**CITY AND COUNTY OF SAN
FRANCISCO**

By: _____

Address:

Date: _____