

San Francisco Peninsula Rail Program

Memorandum

To: Executive Steering Committee

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

Date: November 17, 2023

Re: Item 6 – Consider Integrated Program Management Team Recommendation to amend the San Francisco Peninsula Rail Program Memorandum of Understanding from its current end date of December 31, 2023 to May 10, 2024

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.

The MOU came into effect on June 5, 2020, upon completion of execution by all six parties. The term of the MOU was 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.”

On March 17, 2023, the ESC recommended the first amendment to the MOU to extend the term of the agreement to December 31, 2023. This amendment was executed by all six parties.

DISCUSSION

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. MOU work program tasks with remaining activity include the funding plan (Task 13); operations and maintenance (O&M) planning, including ownership/governance of project elements and agreements for O&M (Task 17); final recommendation for governance arrangement

through construction (Task 18) and implementation of governance recommendations (Task 19); and preparation of draft bid documents (Task 20).

Governance Blueprint and Successor MOU

On August 10, 2023, the TJPA Board approved The Portal Governance Blueprint (Blueprint), as recommended by the ESC. The Blueprint provides guidance for the preparation of a new, multi-party MOU (Successor MOU), among TJPA and the five other partner agencies, to succeed the current MOU. The Blueprint identified the following broad steps to implement its recommendations:

- Preparation of the Successor MOU among TJPA and the five other DTX partner agencies;
- Establishment of the more detailed Delegated Authorities Framework, including levels/thresholds for decision-making recommendations with recognition that TJPA is the Delivery Agency; and
- Formation of the governance bodies recommended in the Blueprint.

Expiration of the Existing MOU

On October 20, 2023, the ESC discussed four options for managing the upcoming expiration of the existing MOU, specifically:

1. Complete and execute Successor MOU by early January 2024;
2. Extend term of existing MOU to a fixed date or milestone;
3. Lapse of existing MOU; and
4. Lapse of existing MOU, with conditions.

The ESC identified either Option 2 or Option 4 as viable, and the ESC discussed the need to further develop governance parameters in the following areas:

- The Portal Board Committee;
- Executive Working Group;
- Change Control Board;
- Integrated Management Team; and
- Work Program for Successor MOU.

Progressing these items would be supportive of either Option 2 (extend) or Option 4 (lapse with conditions).

IPMT Progress and Recommended Extension of the Existing MOU

The IPMT has initiated work to prepare the Successor MOU and develop associated governance parameters. However, the IPMT's work this fall has generally prioritized procurement-related work, including preparation of bid documents (starting with the 40-CT Progressive Design-Build contract) and associated stage gate recommendations.

At its November 7, 2023, meeting, the IPMT discussed the upcoming expiration of the existing MOU. The IPMT recommended that the existing MOU be extended by a limited number of additional months. The rationale for this extension is largely two-fold: 1) to facilitate preparation of the procurement bid

documents for all three major contracts for the project; and 2) to allow sufficient time for the IPMT to prepare and bring forward to the ESC the Successor MOU and related components of governance.

In consultation with the ESC Chair and Vice Chair, this report recommends an extension of just over four months, to May 10, 2024. This date will allow the existing MOU to be in place through the TJPA Board's meeting of May 9, 2024. A draft of a term-only second amendment to the existing 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 the recommended second 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 the second amendment.

RECOMMENDATION

Amend the San Francisco Peninsula Rail Program Memorandum of Understanding from its current end date of December 31, 2023 to May 10, 2024.

ATTACHMENT

1. MOU Amendment No. 2 – Draft

AMENDMENT NO. 2
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 December 31, 2023, is Amendment No. 2 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 as once amended (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 May 10, 2024.
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: _____