

**STAFF REPORT FOR CALENDAR ITEM NO.: 12
FOR THE MEETING OF: March 14, 2024**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorizing the Executive Director to execute Amendment #2 to the DTX Rail Program Enabling Works Planning Memorandum of Agreement between the Transbay Joint Powers Authority (TJPA) and the Peninsula Corridor Joint Powers Board (“Caltrain”), for additional compensation of \$400,000 for a total not to exceed amount of \$1,455,000 and extending the term, and adopting Amendment No. 5 to the FY23-24 Capital Budget for Phase 2 to reallocate \$150,000 from DTX Preliminary Engineering and Design to accommodate the contemplated Caltrain services for the remainder of the fiscal year, but with no change to the total amount of the fiscal year budget or the overall Phase 2 Program Budget.

EXPLANATION:

Background

To build the DTX, the TJPA will be required to acquire the fee, easements, or use rights for property (ROW) owned or controlled by private entities and project stakeholders, including the State, the City and County of San Francisco, and Caltrain. Careful planning and close coordination between the TJPA and Caltrain are essential for all DTX project work on Caltrain’s ROW.

As required by Federal Transit Administration’s (FTA’s) Capital Investment Grant (CIG) program, the TJPA and Caltrain are developing a 4th and King Yard Agreement (4KY Agreement) that outlines each agency’s responsibility relative to The Portal project work in the Caltrain yard, and a Master Cooperative Agreement (MCA) that outlines each agency’s responsibility to deliver The Portal project.

In the interim period before the 4KY Agreement and MCA can be fully negotiated and presented to the agencies’ boards for approval, the TJPA Board authorized the TJPA to enter into the DTX Rail Program Enabling Works Planning Memorandum of Agreement (MOA). The MOA provides a mechanism for TJPA to reimburse Caltrain for consultant resources assisting Caltrain with planning and managing this extremely complex work in the Fourth and King Yard. The MOA (as once previously amended) set a not to exceed amount of \$1,055,000 and a term expiring no later than March 31, 2024. The integrated design team, composed of representatives from TJPA’s General Engineering Consultant, and project management staff from both TJPA and Caltrain have been working closely together to advance design for what has been termed the “4th and King Yard Preparation” or “4KY” portion of The Portal program of contract packages. The integrated design team consults frequently with Caltrain resources in operations, utilities, and other disciplines. The integrated design team has made significant progress in reaching a common understanding with the operator on an initial scope, schedule, and budget for the 4KY work, including dividing the work into two contract packages and advancing conversations

related to delivery method and responsible agency. This work has been complex and required a significant amount of time from the Caltrain oversight consultants.

Proposed Amendment #2 to the Caltrain MOA

Work on an overall 4KY Agreement has continued through the fall and winter, and TJPA and Caltrain staff believe that an overall agreement can be reached over summer 2024. To continue funding this important work with the integrated design team, an Amendment #2 is presented to support this continued level of effort through the end of September consistent with the average monthly costs thus far, for a total proposed budget amendment of \$400,000 (for an aggregate of \$1,455,000) through a new agreement end date of September 30, 2024, with the option for a time-only extension of three additional months, if needed, exercisable by the mutual agreement of the TJPA and Caltrain Executive Directors.

Amendment No. 5 to the FY23-24 Capital Budget for Phase 2

Each year, the TJPA Board approves an annual operating budget; separate annual capital budgets for Phase 1, Phase 2, and Tenant Improvements; and an annual debt service budget. The annual capital budget for Phase 2 presents the revenues and expenses staff expects the agency to incur for Phase 2 capital costs in that fiscal year; thus, the annual capital budget is a slice of the Phase 2 overall program budget.

In June 2023, the TJPA Board adopted the FY23-24 Capital Budget for Phase 2 in the amount of \$136,705,430. Subsequently, Amendments No. 1 through 4 have revised line item allocations within the FY23-24 Capital Budget but with no change to the overall budget amount. The current budget identifies \$4,590,000 for Downtown Extension Interagency Coordination, which assumes \$3,640,000 for coordination with Caltrain and \$950,000 for coordination with the City and County of San Francisco under the Interagency Cooperation Agreement.

Anticipated FY23-24 expenditures for Caltrain's support exceed the amount included in the current annual Phase 2 Capital Budget by \$150,000, which is the portion of the proposed \$400,000 augmentation discussed above that would be allocated to FY23-24.

TJPA staff recommends approving Amendment No. 5 to the FY23-24 Capital Budget for Phase 2 by reallocating \$150,000, reducing the Property Acquisition line item and increasing the Interagency Agreements line item by the amounts as shown in the attached. This amendment will allow services under the amended Caltrain MOA to proceed through September 2024. This amendment reallocates funds between line item expenses in the budget but does not change the total amount of the budget.

Pursuant to the TJPA Board Policy No. 3 (Budget Policy), Board approval is required to augment an existing line-item appropriation by reallocating funding within and among expenditure categories where the aggregate amount reallocated during the fiscal year is greater than 10% of the original appropriation for that category. This Amendment No. 5 does not exceed the Budget Policy's 10% threshold, but staff is bringing the budget amendment to the Board for transparency.

The proposed amendment to the Caltrain MOA and the proposed amendment to the FY23-24 Capital Budget for Phase 2 does not change the overall Phase 2 Program Budget.

RECOMMENDATION:

Authorize the Executive Director to execute Amendment #2 to the Enabling Works Planning MOA, for additional compensation of \$400,000 for a total not to exceed amount of \$1,455,000, and extending the term, and adopt Amendment No. 5 to the FY23-24 Capital Budget for Phase 2 to reallocate \$150,000 with no change to the total amount of the budget.

ATTACHMENTS:

1. Resolution
2. Amendment #2 to Caltrain Memorandum of Agreement
3. Amendment No. 5 to the FY23-24 Capital Budget for Phase 2

**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, To build the DTX, the TJPA will be required to acquire the fee, easements, or use rights for property owned or controlled by private entities and project stakeholders, including the State, the City and County of San Francisco, and the Peninsula Corridor Joint Powers Board (“Caltrain”); and

WHEREAS, As required by the Federal Transit Administration’s Capital Investment Grants program, TJPA and Caltrain are developing a 4th and King Yard Agreement (4KY Agreement) that outlines each agency’s responsibility relative to The Portal project work in the Caltrain yard, and a Master Cooperative Agreement (MCA) that outlines each agency’s responsibility to deliver the entire DTX project; and

WHEREAS, In the interim period before the 4KY Agreement and MCA can be fully negotiated and presented to the agencies’ Boards for approval, the TJPA requires information sharing, design, operational input, and other coordination with Caltrain to ensure the TJPA meets critical milestones in the Accelerated Work Plan; and

WHEREAS, To assist with planning and managing this extremely complex work, Caltrain will be required to dedicate certain staff resources and retain a consultant(s) to coordinate with the TJPA on Caltrain’s behalf; and

WHEREAS, In February 2023, the TJPA Board authorized the Executive Director to execute the DTX Rail Program Enabling Works Planning Memorandum of Agreement (MOA) with Caltrain, as once subsequently amended, authorizing reimbursement from TJPA to Caltrain for the actual cost of Caltrain’s consultant services in an amount not to exceed \$1,055,000 and a term expiring no later than March 31, 2024; and

WHEREAS, TJPA staff recommend extension of the term through September 30, 2024 and additional compensation of \$400,000 for Caltrain and its consultant to continue work under the MOA as warranted; and

WHEREAS, In June 2023, the TJPA Board of Directors adopted the FY23-24 Capital Budget for Phase 2 in an amount not to exceed \$136,705,430. Subsequently, Amendments No. 1 through 4 have revised line item allocations within the FY23-24 Capital Budget but with no change to the overall budget amount; and

WHEREAS, TJPA staff propose to reallocate certain funds in the FY23-24 Capital Budget for Phase 2, as presented herewith, to accommodate increased compensation for the Caltrain services and make other adjustments but without changing the total amount of the budget; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorize the Executive Director to execute an Amendment #2 to the MOA in the form presented, increasing the compensation by \$400,000 for a total not to exceed amount of \$1,455,000, and extending the term; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors approves Amendment No. 5 to the FY23-24 Capital Budget for Phase 2 in the form presented and without changing the total amount of the budget.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 14, 2024.

Secretary, Transbay Joint Powers Authority



BOARD OF DIRECTORS 2024

DEVORA "DEV" DAVIS, CHAIR
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MARGARET ABE-KOGA
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MONIQUE ZMUDA

MICHELLE BOUCHARD
EXECUTIVE DIRECTOR

[date]

Adam Van de Water
Executive Director
Transbay Joint Powers Authority
425 Mission St #250
San Francisco, CA 94105

Subject: Amendment #2 to the DTX Rail Program Enabling Works Planning Memorandum of Agreement

Dear Mr. Van de Water:

The purpose of this letter is to confirm the terms for Amendment #2 to the March 3, 2023, DTX Rail Program Enabling Works Planning Memorandum of Agreement, as once previously amended by letter dated November 27, 2023 ("MOA") 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 executed the MOA to ensure information sharing, design, operational input, and other coordination, in furtherance of TJPA's critical milestones in the Accelerated Work Plan, particularly related to Enabling Works Planning for the Downtown Rail Extension ("DTX" or "The Portal"), in the interim period before a comprehensive agreement on the 4th and King Yard DTX Preparation ("4KY Agreement") and Master Cooperative Agreement ("MCA") can be presented to the agencies' boards for approval.

The Parties now enter into this Amendment #2, with an effective date of April 1, 2024, to increase the total amount of budget authorized by the Parties, extend the term, and specifically agree to amend the following sections of the MOA in their entirety to read as follows:

I. Section 3, Budget of the MOA is hereby modified as follows:

3. Budget. This Agreement will be for a not-to-exceed amount of one million four hundred and fifty-five thousand dollars (\$1,455,000). This amount shall be revised, if necessary, by agreement of the Parties, each in their sole discretion. If the budget exceeds the total amount of \$1,455,000 and no such agreement is reached, the Parties will cease work and the Parties will not perform any further work or services beyond those described in Appendix B. The Parties shall adhere to the budget and invoicing procedures set forth in Appendix C. Any changes to the budget and invoicing procedures may only be made pursuant to Section 7, Modification, of this Agreement.

II. Section 4, Term of the MOA is hereby modified as follows:

PENINSULA CORRIDOR JOINT POWERS BOARD
1250 San Carlos Ave. – P.O. Box 3006
San Carlos, CA 94070-1306 (650) 508-6200

[date]

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The term of this Agreement shall commence on March 2, 2023. The term of this Agreement shall terminate on the earliest of: (a) the execution of the 4KY Agreement between the Parties; (b) termination by either Party pursuant to Section 10; or (c) September 30, 2024 with an option to extend until December 31, 2024 upon mutual written agreement of the parties.

III. Paragraph 1 of Appendix C of the MOA is hereby modified as follows:

This Agreement will be for a not-to-exceed amount one million four hundred and fifty-five thousand dollars (\$1,455,000). This amount shall be revised, if necessary, by agreement of the Parties, each in their sole discretion. If the budget exceeds the total amount of \$1,455,000 and no such an agreement is reached, the Parties will cease work and the Parties will not perform any further work or services beyond those described in Appendix B. The Parties shall adhere to the budget and invoicing procedures set forth in this Appendix C. Any changes to the budget and invoicing procedures may only be made pursuant to Section 7, Modification, of this Agreement). Caltrain consultant costs are estimated based on actual proposal pricing, to which ICAP multiplier (0.0389) is added ("Fully Loaded Budget").

The MOA is amended only to the extent expressly provided herein; all other provisions of the MOA shall remain in full force and effect. The individuals executing this Amendment #2 to the MOA represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. All terms used herein and not otherwise defined shall have the respective meanings given to such terms in the MOA.

In witness whereof the Parties have signed this Amendment #2 to the MOA as of the effective date specified above with the intent to be legally bound.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____
Michelle Bouchard
Executive Director

PENINSULA CORRIDOR JOINT POWERS BOARD
1250 San Carlos Ave. – P.O. Box 3006
San Carlos, CA 94070-1306 (650) 508-6200

Approved as to Form by:

By: _____
James Harrison
General Counsel, JPB

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Adam Van de Water
Executive Director

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

Secretary, TJPA Board

Approved as to Form by:

By: _____
Deborah Miller
Legal Counsel, TJPA

FY 23-24 Phase 2 (DTX / Portal) Budget	FY 23 -24 Budget Amendment 4 (Board 11-9-23)	FY 23 -24 Budget Amendment 5 (Board 3-14-24)	Difference
REVENUES			
Proposition K San Francisco Sales Tax	6,690,000	6,690,000	
Transit Center CFD Funds	12,150,430	12,150,430	
TIRCP	30,000,000	30,000,000	
Parcel F / Other Regional Funds (to be allocated)	6,500,000	6,500,000	
RM3 (to be allocated)	75,000,000	75,000,000	
Federal Grants (to be awarded)	6,365,000	6,365,000	
TOTAL REVENUES	136,705,430	136,705,430	0
EXPENSES			
Salaries, Fringe Benefits & Admin	2,718,930	2,718,930	-
Admin & Professional Services			
Travel/Conferences (DTX Team)	10,000	10,000	-
Professional Development (DTX Team)	1,500	1,500	-
Engineering & Design Services			
Program Management / Program Controls (current)	8,580,000	8,580,000	-
Program Management / Construction Management (future)	1,500,000	1,500,000	-
Downtown Extension Preliminary Engineering & Design	17,000,000	16,850,000	(150,000)
Downtown Extension Interagency Coordination	5,391,000	5,541,000	150,000
Economic and Related Analysis	107,000	107,000	-
Other Engineering & Design Services (Safety & Security Mgmt Plan/TVA)	3,020,000	3,020,000	-
IT support			
Information Technology Support (PMIS-Kahua)	130,000	130,000	-
Permits and Fees			
Other Permits / ROW / Environmental Fees	80,000	80,000	-
Professional Services			
Financial and Grants Management	450,000	450,000	-
Legal Counsel (SMW / Meyers-Nave)	1,242,000	1,242,000	-
Legislative Services	291,000	291,000	-
Cybersecurity/IT	238,000	238,000	-
Community & Public Relations	225,000	225,000	-
Audits	35,000	35,000	-
Other Intergovernmental Agmts / Prof. Services (3rd Party Agmt Plan, Rec)	1,322,000	1,322,000	-
Real Estate Services			
Relocation Services	1,500,000	1,500,000	-
Environmental, Building & Soil / Hazardous Material Services	1,000,000	1,000,000	-
Real Estate Appraisal Services	500,000	500,000	-
Property Acquisition	91,154,000	91,004,000	-
Archaeological Consultant Services	160,000	160,000	-
Property Management for new TJPA properties	50,000	50,000	-
TOTAL EXPENSES	136,705,430	136,555,430	0