

**STAFF REPORT FOR CALENDAR ITEM NO.: 9  
FOR THE MEETING OF: November 14, 2024**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to enter into Amendment #2 to the Interim Agreement between TJPA and Peninsula Corridor Joint Powers Board (Caltrain), extending the term through December 13, 2024 while the parties negotiate an Amended and Restated Interim Agreement to allow for continued support and engagement of The Portal for information sharing, design and operational input, securing funding, and other coordination to ensure the TJPA meets critical milestones in the work plan and documentation requirements of the Federal Transit Administration (FTA) Full Funding Grant Agreement (FFGA).

TJPA and Caltrain are also engaged in developing a longer-term Master Cooperative Agreement (MCA) which is expected to address key topics, such as funding for project capital costs, design support and coordination, access to Caltrain property interests needed for the project, procurement and construction coordination, operations maintenance and rehabilitation, funding for operating costs, and asset disposition. The MCA is a required Third-Party Agreement to request a FFGA.

**EXPLANATION:**

In August 2023, Caltrain and TJPA approved an Interim Agreement (IA) to govern TJPA and Caltrain's cooperation in advancing The Portal until the MCA is executed. The IA term was initially scheduled to expire on October 1, 2024. The IA was First Amended to extend the term to November 9, 2024 and approve certain consultant resources using the Executive Director's delegated authority and without any increase to the total contract amount.

This action requests the Board's approval to authorize the Executive Director to further extend the term to December 13, 2024 without any change in total contract amount. At the TJPA Board meeting in December, TJPA staff expect to seek the Board's approval of an Amended and Restated IA that will allow continued coordination with Caltrain while the parties negotiate an MCA.

TJPA continues to require information sharing, design and operational input, and other coordination with Caltrain for the advancement of The Portal. Specifically, TJPA requires Caltrain's engagement and support as design work on the project progresses, reflecting Caltrain's role as initial rail service operator of The Portal. This engagement and support will particularly focus on work affecting the Caltrain railyard, Caltrain's existing infrastructure, and Caltrain's future service extension.

Concurrently, TJPA and Caltrain remain engaged in developing the MCA to be completed prior to the TJPA's schedule milestone to begin negotiating the FFGA. The MCA is expected to address key topics, such as funding for project capital costs, design support and coordination, access to Caltrain property interests needed for the project, procurement and construction coordination, operations maintenance and rehabilitation, funding for operating costs, and asset disposition. Additionally, TJPA and Caltrain have also been negotiating an agreement for the

portion of The Portal necessary to be executed within Caltrain's operating right of way, a portion of the work termed "Fourth and King Railyard" or "4KY". The parties have made significant progress in their negotiations, but additional discussion is required.

**RECOMMENDATION:**

Staff recommends that the Board authorize the Executive Director to execute Amendment #2 to the IA with Caltrain, in the form attached, with an effective date of November 10, 2024, to extend the term, without any change to the aggregate contract amount or other provisions of the IA, through December 13, 2024.

**ENCLOSURES:**

1. Resolution
2. Interim Agreement Amendment #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) or The Portal; and

WHEREAS, The TJPA is actively engaged in developing The Portal; and

WHEREAS, As part of the Federal Transit Administration (FTA) Capital Investment Grants (CIG) Program, and before commencing negotiation of a Full Funding Grant Agreement (FFGA), 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 (Caltrain) are developing a Master Cooperative Agreement (MCA), which is expected to address key topics, such as funding for project capital costs, design support and coordination, access to Caltrain property interests needed for the project, procurement and construction coordination, operations maintenance and rehabilitation, funding for operating costs, 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 Caltrain to ensure the TJPA meets critical milestones in the accelerated work plan and documentation requirements of the FFGA, all of which are expected to be eligible for reimbursement as local share to the CIG grant; and

WHEREAS, Caltrain is willing to provide such support to TJPA to advance The Portal, but requires reimbursement of certain costs incurred; and

WHEREAS, TJPA and Caltrain staff have negotiated an Interim Agreement (IA), which staff presented to the TJPA Board, memorializing the parties' continued cooperation, and authorizing reimbursement from TJPA to Caltrain for such efforts, while the parties negotiate a longer-term MCA; and

WHEREAS, On August 10, 2023, the TJPA Board of Directors authorized the Executive Director to enter into an IA between TJPA and Caltrain, for a term through September 30, 2024 and a total not to exceed amount of \$5,018,239, while the parties negotiate a longer-term MCA; and

WHEREAS, The TJPA Executive Director executed Amendment #1 to the IA under the authority delegated by the TJPA Board of Directors, to extend the IA through November 9, 2024 and approve certain consultant resources without any increase to the total contract amount, while the parties negotiate an Amended and Restated IA; and

WHEREAS, TJPA and Caltrain staff propose to execute Amendment #2, in the form presented, further extending the term of the IA through December 13, 2024 without any increase in the total contract amount while the parties negotiate an Amended and Restated IA; and

WHEREAS, At the TJPA Board meeting in December, TJPA staff expect to seek the Board's approval of an Amended and Restated IA that will allow continued coordination with Caltrain while the parties negotiate an MCA; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to enter into Amendment #2 to the IA with Caltrain, in the form presented, extending the term through December 13, 2024 and without any increase in the total contract amount.

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

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Secretary, Transbay Joint Powers Authority



TRANSBAY JOINT POWERS AUTHORITY

Adam Van de Water • Executive Director

November 14, 2024

Via Email

Michelle Bouchard

Email: BouchardM@caltrain.com

Subject: Amendment #2 to the Interim Agreement regarding the Downtown Rail Extension, Phase 2 of the Transbay Program

Dear Ms. Bouchard:

The purpose of this letter is to confirm the terms for Amendment #2 to the September 1, 2023 Interim Agreement regarding the Downtown Rail Extension, Phase 2 of the Transbay Program, as First Amended dated September 30, 2024 (as amended, “Interim 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”).

The Parties executed the Interim Agreement to govern the Parties’ cooperation in advancing the Downtown Rail Extension (“DTX” or “The Portal”), including the role of an Integrated Project Delivery Team, joint decision-making process for decisions leading up to a future Master Cooperative Agreement, a staffing plan, a description of resources needs, a budget for Caltrain’s interim work on the DTX Project, and a reimbursement mechanism, along with a proposed schedule for the negotiation and execution of any necessary interim agreements and the MCA, in the interim period before a Master Cooperative Agreement (“MCA”) can be presented to the agencies’ boards for approval.

The Interim Agreement expires November 9, 2024. The TJPA Board has authorized the extension of the term through December 13, 2024.

The Parties now enter into this Amendment #2, with an effective date of November 10, 2024, to extend the term, without any change to the aggregate budget or other provisions of the Interim Agreement. The Parties specifically agree to amend the following sections of the Interim Agreement in their entirety to read as follows:

I. Section I., Scope, Definitions, and General Agreements, Subsection C., Term of the Interim Agreement, is hereby modified as follows:

The term of this Agreement (“Term”) will commence upon the Effective Date and end on ~~November 9, 2024~~ December 13, 2024, unless (i) the Parties enter into a MCA at an earlier date; or (ii) the Parties agree to extend the Agreement, subject to approval by the Board of Directors of both Parties; or (iii) the Agreement is earlier terminated pursuant to the terms described in Section VII(F) herein.

The Interim Agreement is amended only to the extent expressly provided herein; all other provisions of the Interim Agreement shall remain in full force and effect. The individuals executing this Amendment #2 to the Interim Agreement 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 Interim Agreement.

In witness whereof the Parties have signed this Amendment #2 to the Interim Agreement as of the effective date specified 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

**PENINSULA CORRIDOR JOINT POWERS BOARD**

By: \_\_\_\_\_  
Michelle Bouchard  
Executive Director

**Approved as to Form by:**

By: \_\_\_\_\_  
James Harrison  
General Counsel, JPB