

STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: November 8, 2018

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Approve a Cooperative Agreement between the Transbay Joint Powers Authority (TJPA) and the Metropolitan Transportation Commission (MTC) to reimburse MTC for certain fees related to the established panel of technical experts independently reviewing matters related to the fissures in girders in the transit center.

EXPLANATION:

On September 25, 2018, workers discovered a fissure in the bottom flange of a steel girder in the ceiling of the bus deck level of the transit center near Fremont Street. Further inspections revealed a second fissure through half of the lower flange on a separate girder parallel to the first near the same location at Fremont Street.

As a result of the fissures, project contractors have implemented a shoring system at Fremont Street as well as at First Street (which has a similar design and loading conditions as Fremont Street but is structurally sound with no fissures present) (“Temporary Shoring System”); and structural engineers are designing a proposed permanent reinforcement to fix Fremont Street and reinforce First Street (“Permanent Reinforcement Fix”).

As a result of the fissures, TJPA staff engaged an independent expert to review the Temporary Shoring System and planned to engage a panel of technical experts to participate in an independent review of the Permanent Reinforcement Fix, the TJPA’s findings with respect to the cause of the fissures, and such other related matters as appropriate.

On October 4, 2018, the Mayors of the City and County of San Francisco and the City of Oakland urged MTC to facilitate an independent peer review panel. MTC was willing to engage such a panel in lieu of the TJPA, and MTC has already started to facilitate the independent peer review panel; the panel’s work is on-going.

MTC has requested that the TJPA reimburse MTC for certain fees related to the peer review panel, for an amount not to exceed \$510,000. TJPA staff anticipates that these costs ultimately will be paid by the party or parties found responsible for the fissure. Thus, the TJPA expects to seek reimbursement of these costs from that party or parties. TJPA staff requests a transfer of Program Reserves to fund the effort, and at the upcoming Cost Review Committee meeting, will request to fund this work with City Financing proceeds.

MTC prepared a proposed form of Cooperative Agreement regarding reimbursement for certain fees associated with the peer review panel. Attached is the negotiated form. Typically, the TJPA would not agree to indemnify another party for claims arising from that party’s performance of the agreement. MTC explained that such an approach was essential in this case.

RECOMMENDATION:

Staff recommends that the TJPA Board authorize the Executive Director to execute a Cooperative Agreement with MTC for reimbursement of fees in the form attached to this report, and authorize the transfer of \$510,000 from Program Reserve to cover the peer review effort.

ATTACHMENTS:

1. Cooperative Agreement re Reimbursement
2. Resolution

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On September 25, 2018, workers discovered a fissure in the bottom flange of a steel girder in the ceiling of the bus deck level of the transit center near Fremont Street. Further inspections revealed a second fissure through half of the lower flange on a separate girder parallel to the first near the same location at Fremont Street; and

WHEREAS, As a result of the fissures, TJPA staff engaged an independent expert to review the proposed temporary shoring system, and planned to engage a panel of technical experts to participate in an independent review of the proposed permanent reinforcement fix for Fremont and First Street, the TJPA's findings with respect to the cause of the fissures, and such other related matters as appropriate; and

WHEREAS, On October 4, 2018, the Mayors of the City and County of San Francisco and the City of Oakland urged the Metropolitan Transportation Commission (MTC) to facilitate an independent peer review panel; and

WHEREAS, MTC was willing to engage such an independent peer review panel in lieu of the TJPA, and MTC has already started to facilitate the independent peer review panel; the panel's work is on-going; and

WHEREAS, MTC has requested that the TJPA reimburse MTC for certain fees related to the peer review panel; and

WHEREAS, The TJPA and MTC staff have negotiated a Cooperative Agreement for reimbursement of fees in an amount not to exceed \$510,000; and

WHEREAS, Transferring \$510,000 from Program Reserve will provide funds to cover the costs for the peer review effort; and

WHEREAS, The TJPA expects to seek reimbursement of the costs related to the peer review panel incurred under this Cooperative Agreement by the party or parties responsible for the fissures; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Cooperative Agreement between the TJPA and MTC in the form attached to reimburse MTC for certain fees related to the established panel of technical experts independently reviewing matters related to the fissures in girders in the transit center; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes staff to transfer \$510,000 from the Program Reserve for the peer review effort; and, be it

FURTHER RESOLVED, That the TJPA Board authorizes the Executive Director to take all actions and execute all documents as he deems reasonably necessary to implement and effectuate the above approval.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of November 8, 2018.

Secretary, Transbay Joint Powers Authority

COOPERATIVE AGREEMENT
Between METROPOLITAN TRANSPORTATION COMMISSION
And TRANSBAY JOINT POWERS AUTHORITY
For TRANSBAY TRANSIT CENTER PEER REVIEW PROJECT

THIS COOPERATIVE AGREEMENT (“Agreement”), entered into effective on October 12, 2018, is between the TRANSBAY JOINT POWERS AUTHORITY, referred to herein as “TJPA,” and the METROPOLITAN TRANSPORTATION COMMISSION, referred to herein as “MTC.”

RECITALS

WHEREAS, TJPA is a joint exercise of powers authority created by the City and County of San Francisco, the Alameda-Contra Costa Transit District, the Peninsula Corridor Joint Powers Board, the California High Speed Rail Authority, and Caltrans, and TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the new transit center in downtown San Francisco; and

WHEREAS, On September 25, 2018, workers discovered a fissure in the bottom flange of a steel girder in the ceiling of the bus deck level of the transit center near Fremont Street. Further inspections revealed a second fissure through half of the lower flange on a separate girder parallel to the first near the same location at Fremont Street; and

WHEREAS, As a result of the fissures, project contractors have implemented a shoring system at Fremont Street as well as at First Street (which has a similar design as Fremont Street) (“Temporary Shoring System”); and structural engineers are designing a proposed permanent reinforcement fix for Fremont Street and First Street (“Permanent Reinforcement Fix”); and

WHEREAS, TJPA and MTC have agreed MTC will facilitate a panel of technical experts to participate in an independent review of the Temporary Shoring System and the Permanent Reinforcement Fix, TJPA’s findings with respect to the cause of the fissures, and such other related matters as appropriate; and

WHEREAS, MTC has started to facilitate the independent peer review panel, and the panel’s work is on-going.

NOW, THEREFORE, the parties hereby agree as follows:

I. MTC AGREES

A. MTC has engaged a panel of technical experts (Consultants) to participate in an independent review of the Temporary Shoring System and the Permanent Reinforcement Fix, TJPA’s findings with respect to the cause of the fissures, and such other related matters as appropriate (collectively, “PROJECT”), as described in Attachment A, Scope of Work. MTC will

provide all reasonably necessary staffing and support resources to complete the PROJECT as described in Attachment A.

B. The budget for the PROJECT is described in Attachment B, Budget. The maximum amount payable to MTC for PROJECT, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors costs (including mark-up), travel, equipment, materials and supplies, and expenses, and excluding any indemnification and defense obligations of TJPA under Section II.C., below, shall not exceed five hundred ten thousand dollars (\$510,000) (“Maximum Payment”).

C. MTC shall maintain full and adequate PROJECT books, records, and accounts in accordance with generally accepted accounting practices. All such books, records, accounts, and any and all work products, materials, and other data relevant to PROJECT performance under this Agreement shall be retained by MTC for a minimum of four (4) years following the fiscal year of the last expenditure under this Agreement.

D. MTC shall permit TJPA and its authorized representatives to have, during normal business hours, access to the MTC's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Section I.C. above. MTC shall not dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time. Such permission shall extend to books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement of MTC's contractors and subcontractors. Such permission shall include any access necessary for TJPA's reimbursement of costs under this Agreement as may be made by TJPA's contractors or insurers.

E. MTC shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government including but not limited to TJPA that relate to or in any manner affect the performance of the Agreement.

II. TJPA AGREES

A. TJPA agrees to provide an amount not to exceed Maximum Payment defined in Section I.B above in non-federal funds to MTC to fund PROJECT.

B. Subject to the terms of the previous paragraphs, TJPA agrees to make payments to MTC within forty-five (45) days after receipt by TJPA of each acceptable invoice, subject to the review and approval of TJPA's Project Manager.

MTC shall deliver or mail invoices to TJPA, as follows:

Attention: Mark Zabaneh, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105

C. TJPA shall indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees (collectively, “MTC Indemnified Parties”) from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith) (collectively “Claims”), incurred as a result of MTC’s performance of the PROJECT, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Claims are caused by the gross negligence or willful misconduct of an MTC Indemnified Party, in which case TJPA shall indemnify MTC Indemnified Parties for the full proportion of the Claims that is not as a result of the gross negligence or willful misconduct of the MTC Indemnified Party. TJPA agrees at its own cost, expense, and risk to defend any and all Claims, actions, or other legal proceedings brought or instituted against MTC Indemnified Parties, or any of them, arising out of MTC’s performance of the PROJECT, and to pay and satisfy any resulting judgments, except such portion resulting from the gross negligence or willful misconduct of an MTC Indemnified Party.

D. Should MTC or Consultants request records or information in the TJPA’s files in performance of PROJECT, TJPA shall reasonably cooperate in providing the requested materials (it being expressly recognized that because of MTC’s services under this Agreement, MTC’s access to confidential and privileged records and information of the TJPA does not waive the TJPA’s right to claim any applicable privileges as to such materials, and, further that such materials may contain Sensitive Security Information (SSI) protected under federal law and MTC’s access to any such protected materials is intended to be in conformance with and subject to federal law). Should MTC or Consultants request access to the construction site and related field operations in performance of PROJECT, MTC shall provide reasonable notice to the TJPA, and the TJPA shall provide access as it deems reasonable; TJPA makes no representation or warranty as to the safety or accessibility of the site.

III. IT IS MUTUALLY AGREED

A. Any substantive material changes in the activities to be performed under this Agreement, or in the terms thereof, shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the MTC Executive Director, or a designated representative, and the TJPA’s Executive Director, or a designated representative. No request for additional compensation or an extension of time shall be recognized unless contained in a duly executed amendment.

B. The term of the Agreement shall begin on the Effective Date and conclude on April 1, 2019, unless either party terminates this agreement earlier as provided below except for obligations of the parties that by their nature would extend beyond such term.

C. Either party may terminate this Agreement without cause upon fourteen (14) days prior written notice; however MTC will be entitled to payment for PROJECT costs appropriately incurred during the term, up to the Maximum Payment under this Agreement.

D. Except for invoices submitted by MTC to the TJPA pursuant to Section II.B above, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To MTC: Attention: Stephen Wolf, Project Manager
Metropolitan Transportation Commission
375 Beale St, Suite 800
San Francisco, CA 94105
Email: swolf@bayareametro.gov

To TJPA: Attention: Mark Zabaneh, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Email: MZabaneh@tjpa.org

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

E. The formation, interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to this Agreement shall be in San Francisco.

F. This Agreement sets forth the entire agreement between the parties relative to PROJECT, and supersedes all other oral or written provisions relative to PROJECT.

G. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective on the date first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

METROPOLITAN TRANSPORTATION
COMMISSION

By: _____
Mark Zabaneh, Executive Director

By: _____
Steve Heminger, Executive Director

Approved as to form:

Attorney
TJPA

ATTACHMENT A

SCOPE OF WORK

The services to be performed by MTC's independent expert panel shall consist of services requested by the MTC Project Manager or a designated representative as described below. In all Tasks, the panel is reviewing and commenting on products produced by the TJPA team.

Task 1: Review and comment on the Temporary Shoring System.

Task 2: Review and comment on the proposed sampling & testing plan.

Task 3: Review and comment on cause of the fissures at two girders.

Task 4: Review and comment on the Permanent Reinforcement Fix.

Task 5: Other reviews as needed and determined by Project Manager and in consultation with TJPA regarding priorities and available budget.

ATTACHMENT B

BUDGET

Actual expenses for individual tasks and line items may vary from the totals shown below as long as the cumulative total for all tasks and line items remains at or below the Estimated Total shown below.

	Quantity ⁴	Unit	Weeks	Avg Hours per Week	Rate	Total
Labor						
Task 1: Review and comment on Temporary Shoring System						
Review by panelists	4*	Panelists	1	52	\$225 - \$425**	\$16,800
Task 2: Review and comment on proposed sample & testing plan						
Review by panelists	4*	Panelists	3	52	\$225 - \$425**	\$50,400
Task 3: Review and comment on the cause of the fissures at two						
Review by panelists	4*	Panelists	3	52	\$225 - \$425**	\$50,400
Task 4: Review and comment on the Permanent Reinforcement Fix						
Review by panelists	4*	Panelists	4	52	\$225 - \$425**	\$67,200
Task 5: Other reviews as needed and determined						
Review by panelists	4*	Panelists	1	52	\$225 - \$425**	\$16,800
Tasks 1-5: Consultant assistance, as needed						
Consultant assistance to provide additional technical expertise or	3	Consultants	10	12	\$350	\$126,000
Direct Costs***						
Travel out-of-state (4 people, 6 trips ea: flights, hotels, and per diem)	30	person trips	total over 11 weeks		\$2,200	\$66,000
Travel in-state (1 person, 6 trips ea: travel and per diem)	6	person trips	total over 11 weeks		\$500	\$3,000
Reprographics	1	lum sum			\$15,000	\$15,000
Meals (hosted events external to MTC and panel)	150	lunch/breakfast			\$25	\$3,750
MTC Travel (2 people, 2 trips ea, flights hotels, and per diem)	4	person trips			\$2,200	\$8,800
Subtotal						\$424,150
Contingency	20%					\$84,830
Estimated Total - All Tasks and Line Items						\$508,980

* There are a total of 5 panelist, however, there is no charge for the panelist from FHWA

** Individual panelists rates are as follows:

Michael Engelhardt, Chair	\$	300
Tom Sabol	\$	350
John Fisher	\$	425
Robert Shaw	\$	225 (\$200 in-office \$250 on-site)
Brian Kozy, FHWA		no charge

*** Travel-related expenses (e.g., airfare, automobile rental, taxicab fares, parking, meals) must adhere to the "TJPA Travel Policy for Consultants and Subconsultants."