

STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: August 10, 2023

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to enter into an Interim Agreement between TJPA and Peninsula Corridor Joint Powers Board (Caltrain), for the period of September 1, 2023 through September 30, 2024, in an amount not to exceed \$5,018,239, while the parties negotiate a longer term Master Cooperative Agreement (MCA), and adopt Amendment No. 1 to the FY 23-24 Capital Budget for Phase 2 to reallocate necessary funds, with no change in the total amount of the budget.

EXPLANATION:

Background

As part of the Federal Transit Administration (FTA) Capital Investment Grants (CIG) Program, and before the TJPA's October 2024 scheduled milestone to begin negotiating a Full Funding Grant Agreement (FFGA) for the Downtown Rail Extension (DTX), now known as The Portal, 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. TJPA is actively engaged with the necessary third parties to timely secure the required agreements. FTA requires "substantial progress" on third-party agreements before the project enters the Engineering Phase in Fall 2023. Executing the Interim Agreement (IA) presented here will demonstrate substantial progress towards the Caltrain third-party agreement requirement.

TJPA and Caltrain have been engaged over the past year developing an MCA to be completed prior to the TJPA's October 2024 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. The parties have made progress in their negotiations, but additional discussion is required over the next year.

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. Additionally, Caltrain has informed TJPA that Caltrain requires reimbursement for its staff and consultant efforts negotiating the MCA.

In July of 2022, TJPA and Caltrain entered into a Letter of Agreement (LOA) to reimburse Caltrain's costs in this effort beyond its role on the Executive Steering Committee (ESC) and support on the Integrated Program Management Team (IPMT). The LOA has been amended twice. The not to exceed budget under the LOA (as amended) is about \$3.519M (about \$436k in FY21-22 and \$3.083M in FY22-23 through the end of the term). The LOA expires August 31, 2023.

Interim Agreement

To meet the accelerated work plan, the TJPA continues to require information sharing, design and operational input, and other coordination with Caltrain. It is also beneficial to TJPA to document its cooperation with Caltrain as design work on the project progresses, particularly for work affecting the Caltrain railyard and Caltrain's existing improvements and service. Accordingly, TJPA staff negotiated an IA with Caltrain (attached) that will govern TJPA and Caltrain's cooperation in advancing The Portal through September 2024 when the MCA is expected to be executed.

The scope of the IA includes the following items:

- 1) Decision Making Process and Project Delivery Roles: TJPA staff's recommendation for an integrated project delivery team for design of The Portal during the term of the agreement (see IA Section II).
- 2) Staffing, Budget, and Reimbursement: terms and conditions for TJPA's commitment to reimburse Caltrain for its staff and consultant support during the term of the agreement (see IA Section III). It includes a joint work plan (see IA Exhibit B), a staffing plan (see IA Exhibit C), a not to exceed budget (see IA Exhibit D), and reimbursement terms and conditions. The not to exceed budget under the IA is \$5,018,239 (\$3,638,370 for the portion of the term in FY 23-24 and \$1,379,869 for the portion of the term in FY 24-25), broken out by Caltrain staff and consultant.
- 3) Joint Workplan: expected tasks and activities Caltrain and TJPA will jointly undertake during the term, including: 1) advancing design of 4th and King Yard Preparation; 2) preparing procurement documents and beginning contractor selection for the project; 3) conducting specified studies to support design, procurement, environmental and grant documents; 4) completing work to support FTA deliverables; 5) reaching agreement on a comprehensive MCA; and 6) reaching other interim agreements, including with regard to 4th and King Yard DTX Preparation, as needed (see IA Exhibit B).
- 4) 4th and King Yard DTX Preparation: concurrence on the design approach for certain work that needs to progress prior to the MCA related to the 4th and King Yard DTX Preparation and access to the Caltrain railyard (see IA Sections IV and V).

In addition to the LOA and the IA recommended here, it is important to note that TJPA and Caltrain have also entered the 2023 Enabling Works Planning Memorandum of Agreement ("Enabling Works MOA"), pursuant to which TJPA agreed to reimburse Caltrain an amount not to exceed \$595,000 for Caltrain's consultant costs to provide certain project management oversight services. The Enabling Works MOA is scheduled to expire March 31, 2024. TJPA staff anticipate that Caltrain will require the project management oversight services to continue for 6 additional months (co-extensive with the term of the IA). While a final budget has not yet been prepared, TJPA staff estimate that the additional cost of that work will be on the order of \$750,000. TJPA staff plan to return to the TJPA Board for approval of that additional expenditure and an extension of the term before the Enabling Works MOA expires.

Caltrain staff recently presented the IA to one of its Board committees and received a favorable recommendation to send to Caltrain's full Board for approval; Caltrain's execution of the IA is conditioned on its Board's approval.

TJPA anticipates that costs incurred in support of advancing The Portal are considered eligible local share to the CIG grant.

Amendment No. 1 to the FY 23-24 Capital Budget for Phase 2

On June 8, 2023, the TJPA Board of Directors adopted the FY 23-24 Capital Budget for Phase 2 in an amount not to exceed \$136,705,430. The budget identifies \$3,350,000 for Downtown Extension Interagency Coordination, which assumed \$2,400,000 for coordination with Caltrain under this IA and \$950,000 for coordination with the City and County of San Francisco under the recently-approved Interagency Cooperation Agreement.

The not to exceed amount under the IA for the portion of the term in FY 23-24 (\$3,638,370) exceeds the amount TJPA staff anticipated for this effort in the Board-adopted FY 23-24 Phase 2 Capital Budget (\$2,400,000). This is due primarily to an acceleration of the level of effort, an extension of the time duration for the work, and a sharing of some decision-making as part of the integrated project delivery team. TJPA staff plan to reconcile this difference by reducing planned expenditures in other budget line items in the current fiscal year.

Staff proposes to reallocate about \$1,240,000 from certain funds in the FY 23-24 Capital Budget for Phase 2, without changing the total amount of the budget, to accommodate the IA. Staff recommend the Board adopt Amendment No. 1 to FY 23-24 DTX Capital Budget as shown in the attached. The reallocation does not increase the total budget.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to enter into an Interim Agreement between TJPA and Caltrain, in the form attached, for a period from September 1, 2023 to September 30, 2024, for a total not to exceed amount of \$5,018,239, and adopt Amendment No. 1 to the FY 23-24 Capital Budget for Phase 2 to reallocate funds with no change in the total amount of the budget.

ATTACHMENTS:

1. Resolution
2. Interim Agreement
3. Amendment No. 1 to the FY 23-24 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) 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) in October of 2024, 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, 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 June 8, 2023, the TJPA Board of Directors adopted the FY 23-24 Capital Budget for Phase 2 in an amount not to exceed \$136,705,430; and

WHEREAS, TJPA staff propose to reallocate certain funds in the FY 23-24 Capital Budget

for Phase 2 without changing the total amount of the budget; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorize the Executive Director to enter into an Interim Agreement between the TJPA and Caltrain, in the form presented, for the term of September 1, 2023 to September 30, 2024, for a total not to exceed amount of \$5,018,239, while the parties negotiate a longer-term MCA; and

FURTHER RESOLVED, That the TJPA Board of Directors approves Amendment No. 1 to the FY 23-24 Capital Budget for Phase 2 in the form presented 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 August 10, 2023.

Secretary, Transbay Joint Powers Authority

**INTERIM AGREEMENT BETWEEN THE TRANSBAY JOINT POWERS AUTHORITY AND THE
PENINSULA CORRIDOR JOINT POWERS BOARD REGARDING THE DOWNTOWN RAIL
EXTENSION, PHASE 2 OF THE TRANSBAY PROGRAM**

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INTERIM AGREEMENT BETWEEN THE TRANSBAY JOINT POWERS AUTHORITY AND THE PENINSULA CORRIDOR JOINT POWERS BOARD REGARDING THE DOWNTOWN RAIL EXTENSION, PHASE 2 OF THE TRANSBAY PROGRAM

This is an Interim Agreement ("Agreement") between the Transbay Joint Powers Authority ("TJPA") and the Peninsula Corridor Joint Powers Board ("Caltrain") (TJPA and Caltrain are collectively referred to as the "Parties"). This Agreement will be superseded by the execution of a final Master Cooperative Agreement ("MCA") between the Parties to be developed as described in this Agreement.

RECITALS

- A. TJPA is a joint exercise of powers authority formed by the City and County of San Francisco ("City"), the Alameda-Contra Costa Transit District ("AC Transit"), Caltrain, and the California High Speed Rail Authority ("CHSRA").
- B. The Peninsula Corridor Joint Powers Board is a joint exercise of powers authority that owns and operates Caltrain, the commuter rail service that runs from San Francisco to Gilroy. The joint powers authority was formed by the City, the Santa Clara Valley Transportation Authority ("VTA"), and the San Mateo County Transit District ("SMCTD").
- C. In November 1999, San Francisco voters approved Proposition H, mandating that the city extend the Caltrain commuter rail to downtown San Francisco in a new regional transit station on the site of the (then) existing Transbay Terminal and mandating that the new station serve high speed rail.
- D. TJPA is delivering the Transbay Program, a transportation project intended to transform downtown San Francisco and the San Francisco Bay Area's regional transportation system. A map of the Transbay Program project is attached here as Exhibit A. The Transbay Program replaced the former Transbay Terminal at First and Mission Streets in San Francisco with a modern regional transit hub connecting the Bay Area and ultimately the State of California through: AC Transit, BART, Caltrain, Golden Gate Transit, Greyhound, Muni, SamTrans, WestCAT Lynx, Amtrak, paratransit and future high-speed rail from San Francisco to Los Angeles/Anaheim.
- E. TJPA has completed Phase 1 of the Transbay Program, construction of the Salesforce Transit Center. TJPA is actively engaged in delivery of Phase 2 of the Transbay Program, the Downtown Rail Extension, now also known as "The Portal," referred to herein as the "DTX Project."
- F. The DTX Project will connect Caltrain's regional rail system and the future California High-Speed Rail Authority's statewide system to the Transit Center in downtown San Francisco. The rail alignment will be principally below grade and provide a link for Caltrain customers and future travelers who use the state's high-speed rail system.
- G. The DTX Project includes a station, track, and related facilities partially within the Caltrain yard and station property bounded by 4th and 7th Street and King and Townsend Street and the portion of the mainline between the Railyard and MP 1.0 (the 16th Street crossing) (such portion of the DTX Project within Caltrain's property interests collectively "4th and King Yard DTX Preparation"). See Exhibit A for a map of the designated area.
- H. Caltrain's retention of a consultant working under Caltrain staff supervision and on Caltrain's behalf on all matters related to the planning for the 4th and King Yard DTX Preparation, and TJPA's commitment to reimburse Caltrain for costs related to such effort through March 2024, is covered under a separate agreement between the Parties, the March 2, 2023 DTX Rail Program

Enabling Works Planning Memorandum of Agreement. This Agreement will not supersede the March 2, 2023 DTX Rail Program Enabling Works Planning Memorandum of Agreement.

- I. The Parties agree that they must execute an agreement regarding real property interests and that TJPA must execute a Full Funding Grant Agreement with FTA for the project before Enabling Works may begin for the 4th and King Yard DTX Preparation. The Parties agree that Enabling Works for 4th and King Yard DTX Preparation will be covered in a separate future agreement, which will require approval by the Boards of Directors of both agencies.
- J. Pursuant to California Public Resources Code section 5027.1, TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program.
- K. Caltrain plays an essential role as the first rail service operator upon the opening of the DTX Project and, pursuant to terms under the MCA, will jointly with TJPA, approve elements of the DTX Project including, but not limited to, elements affecting railroad operations and railroad maintenance. In addition, as an operator, Caltrain is responsible for complying with state and federal law governing railroad operations and safety. As a result, Caltrain must have final approval over any decisions affecting railroad operations, maintenance, safety and security, pursuant to terms under the MCA including that Caltrain will not unreasonably withhold its approval and will exercise its review in a timely manner. While this Agreement is in effect and the MCA is being prepared, Caltrain and TJPA will work together to define the elements of the project requiring Caltrain approval, with a defined approach to elements that are not considered during this process and arise over the years of continued design, delivery, and operations.
- L. TJPA, the Metropolitan Transportation Commission, the San Francisco County Transportation Authority, Caltrain, the California High Speed Rail Authority, and the City and County of San Francisco have entered into the San Francisco Peninsula Rail Program Memorandum of Understanding (“MOU”) to support the efforts of TJPA in development of the DTX Project to a ready-for-procurement status. The parties to the MOU recognize the DTX Project is a critical rail link in the Bay Area, mega-region, and state transportation system and that it will be more efficiently and effectively developed through a multi-agency partnership among local, regional, and state stakeholder agencies with expertise in developing, funding, and implementing major infrastructure projects. TJPA, Caltrain, and the other parties to the MOU anticipate continuing their cooperative efforts related to planning, design, construction, funding, and other implementation matters pursuant to an integrated project team model. Future agreements entered into by the parties to the MOU cannot supersede this Agreement, unless Caltrain and TJPA, in their sole discretion, agree.
- M. The Parties agree that this Agreement is only intended to govern the Parties’ cooperation in advancing the DTX Project pursuant to the Joint Work Plan as described in Exhibit B during the Term of the Agreement (as defined below), including the role of an Integrated Project Delivery Team, joint decision-making process for decisions leading up to a MCA, a staffing plan, a description of resource needs, a budget for Caltrain’s work on the DTX Project prior to entering into a MCA, and a reimbursement mechanism, along with a proposed schedule for the negotiation and execution of any necessary interim agreements and the MCA. Through this Agreement, the Parties commit to further negotiations and to provide the resources required to plan the DTX Project, including staffing of the IPDT. This Agreement is interim and does not cover the time period for construction of the DTX Project.

- N. TJPA and Caltrain acknowledge that the work performed under this Agreement shall be in conformance with all applicable Federal and/or State grant conditions and all applicable laws.
- O. The Letter of Agreement between Caltrain and TJPA dated July 14, 2022, as amended, expires by its terms August 31, 2023. This Agreement follows, and does not supersede or replace, the Letter of Agreement.
- P. On August 3, 2023, by Resolution No. _____, the Peninsula Corridor Joint Powers Board approved this Agreement. On _____, by Resolution No. _____, the TJPA Board of Directors approved this Agreement.

I. **SCOPE, DEFINITIONS, AND GENERAL AGREEMENTS**

A. **Affirmation of Recitals.**

Caltrain and TJPA affirm that the above recitals are true and correct.

B. **Definitions.**

The following definitions relate to such terms found in the entire Agreement, including, without limitation, all Exhibits hereto.

1. **Agent:** The agents, employees, officers, directors, contractors, subcontractors, and representatives of the Party to whom such term refers.
2. **Agreement:** This Agreement executed by the Parties, including all parts and documents listed herein, all attachments, and all future addenda, substitutions, modifications, and amendments when legally executed and effective.
3. **Approval:** Written approval by a designated representative of either Party. Approval shall not, unless specifically indicated in writing by the representative, constitute a waiver of any standard, code, or other requirement in this Agreement.
4. **Basis of Design:** A document, or series of documents, created by TJPA that describe the processes and assumptions behind major design decisions for the Project.
5. **Board of Directors:** The governing board of either Party, as specified.
6. **Budget:** This term will have the meaning given to it in Section III(C)(1)(b) below.
7. **Caltrain:** The Peninsula Corridor Joint Powers Board ("JPB"), as well as the Peninsula Corridor Commute Train Service.
8. **Caltrain Core System:** Existing passenger services currently operated by Caltrain between 4th and King in San Francisco and Gilroy, as well as a proposed future service extension to Salinas.
9. **Caltrain Design Criteria and Standards:** The set of criteria and standards that Caltrain has developed and relies upon to create a uniform basis of design for all Caltrain projects. Caltrain may provide written variance to these criteria to further enhance operational flexibility or for reasons based on good and sound engineering principles and judgments.
10. **Caltrain Final Comments:** This term will have the meaning given to it in Section II(A)(4)(a)(iv) below.
11. **Caltrain Project Director:** The Caltrain Project Executive, who will be Caltrain's most senior member of the Integrated Project Delivery Team (IPDT). The Caltrain Project Director shall be a California licensed Engineer (or equivalent) with the qualifications, experience, and skills necessary to manage design, construction and rail service activation of the transit operating system.
12. **4th and King Yard DTX Preparation:** A portion of the DTX Project within Caltrain's property interests as defined in Recital G.
13. **Change Order:** A written amendment changing the terms or conditions of a contract between one of the Parties and a third party.
14. **CHSRA:** The California High-Speed Rail Authority.

15. **CMGC:** The Construction Manager/General Contractor method of project delivery.
16. **Contract:** The contract(s) used by TJPA and/or Caltrain to design, build, fabricate, install, and prepare for operations all or any portion of the DTX Project.
17. **Contractor:** The contractor(s) awarded the Contract by TJPA and/or Caltrain.
18. **CPUC:** The California Public Utilities Commission.
19. **Days:** Calendar days, including Saturdays, Sundays, and legal holidays, unless otherwise specified.
20. **Design Exceptions:** Proposed variances to the Caltrain Design Criteria and Standards, or DTX Design Criteria.
21. **Dispute Resolution:** The dispute resolution and escalation process described in Section II(E) of this Agreement.
22. **DTX Design Criteria:** The set of criteria and standards that the Parties have agreed upon to establish a Basis of Design for the DTX Project. The Parties may mutually agree to modify these criteria to further enhance operational flexibility or for reasons based on good and sound engineering principles, cost and judgments.
23. **DTX Procurement Plan:** A document, or series of documents, that identifies requirements and timeframes for the procurement of Contractors for the DTX Project.
24. **DTX Project:** The Downtown Rail Extension Project as defined in Paragraphs E, F, and G of the Recitals, including the 4th and King Yard DTX Preparation, also known as “The Portal.”
25. **Effective Date:** This term will have the meaning given to it in Section VII(G)(13).
26. **Eligible Costs:** Reasonable and actual applicable staff and consultant costs incurred by Caltrain for the DTX Project during the Term of this Agreement, as further defined in Section III(C).
27. **Enabling Works:** Physical construction and preconstruction tasks undertaken at a site in order to prepare the site for additional work. This may include demolition of existing facilities, clearance of trees, or excavation of known obstructions, among other tasks.
28. **Environmental Documents:** A document or series of documents prepared for any governmental entity concerning the environmental condition of any property related to the DTX Project, or the effect of part or all of the DTX Project on environmental conditions related to the DTX Project.
29. **File Sharing Application:** A cloud-based service to be determined by the Parties that allows for mutual access, review, and sharing of files and documents related to the DTX Project.
30. **Force Majeure:** Any event described in Section VII(E) of this Agreement which has an adverse or material impact on either Party’s ability to fulfill its obligations under this Agreement.
31. **FRA:** The Federal Railroad Administration.

32. **FTA Deliverables:** Any document or series of documents submitted or intended to be submitted to the FTA related to the DTX Project.
33. **FTA:** The Federal Transit Administration.
34. **GEC:** A General Engineering Contract.
35. **Integrated Management Team (IMT):** Senior management group supporting active management of project delivery, led by the Caltrain and TJPA Project Directors and composed of partner agency IMT members.
36. **Integrated Project Delivery Team (IPDT):** This term will have the meaning given to it in Section II(A) below.
37. **Joint Work Plan:** This term refers to the set of work the Parties agree to undertake as described in Exhibit B.
38. **Master Cooperative Agreement (MCA):** The contemplated future agreement between the Parties as generally referenced in Paragraph K of the Recitals.
39. **MTA:** The San Francisco Municipal Transportation Agency.
40. **MTC:** The San Francisco Bay Area Metropolitan Transportation Commission.
41. **Party and Parties:** TJPA and Caltrain either collectively or individually.
42. **Procurement Documents:** All documents produced or referred to by TJPA or Caltrain to describe or determine elements of Contract procurement or procedures.
43. **Program Management/Project Controls (PMPC) or Program Management/Construction Management (PMCM) Consultant:** TJPA-procured consultant supporting TJPA in the delivery of the DTX Project. It includes a wide scope of work to support TJPA, including schedule management, real estate and environmental support, and support to complete other technical tasks outside of design work.
44. **Progressive Design Build (PDB):** A project delivery process in which both the design and construction of a project are procured from a single Contractor.
45. **PDB Contractor:** Progressive-Design Build Contractor.
46. **Railyard:** Caltrain yard and station property bounded by 4th and 7th Street and King and Townsend Street.
47. **Salesforce Transit Center:** The existing intermodal transit facility at 425 Mission Street in San Francisco, owned by TJPA, occupied by AC Transit, MTA, and others, and planned as the future northern terminus of Caltrain and CHSRA. May also be referred to as Transbay Transit Center or Transit Center.
48. **SFCTA:** The San Francisco County Transportation Authority.
49. **SFOEWD:** The San Francisco Office of Economic & Workforce Development.
50. **SFPUC:** The San Francisco Public Utilities Commission.
51. **Technical Memoranda and Plans:** Supporting documentation completed to address specific questions or issues that may arise during project development. This documentation will support recommendations for decisions or actions that facilitate continued development.
52. **Term:** This term will have the meaning given to it in Section I(C) below.
53. **Terms of Reference:** This term will have the meaning given to it in Section II(A)(3) below.

54. **TJPA Project Director:** An individual designated by the TJPA Executive Director, responsible for seeing that obligations are met as part of this Agreement. The TJPA Project Director shall be a California licensed Engineer (or equivalent) with the qualifications, experience, and skills necessary to manage construction and rail service activation of the transit operating system.
55. **TJPA:** The Transbay Joint Powers Authority.

C. Term.

The term of this Agreement (“Term”) will commence upon the Effective Date and end on October 1, 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.

D. Purpose of Agreement.

The DTX Project will be advanced over the course of approximately ten (10) years, and Caltrain and TJPA expect the responsibilities of the Parties to change and adjust over time. Caltrain and TJPA intend for this Agreement to provide a flexible mechanism to enable the Parties to cooperate on the DTX Project as the DTX Project advances prior to the execution of an MCA between the Parties.

This Agreement sets out the interaction, consultation, and cooperation between the Parties and is intended to govern the parties’ cooperation in advancing the DTX Project during the Term of the Agreement.

E. Scope of the Agreement.

The Scope of this Agreement includes (1) the work specified herein jointly undertaken by the Parties to advance the DTX Project during the Term of the Agreement, (2) the role of an Integrated Project Delivery Team and the decision-making process during the Term, (3) a staffing plan, a description of resource needs, a budget, and a reimbursement mechanism for Caltrain’s costs for the DTX Project during the Term, (4) concurrence on the design approach for certain work that needs to progress during the Term of the Agreement related to the 4th and King Yard DTX Preparation, (5) process for TJPA access to Caltrain property to support necessary design work during the Term of the Agreement, and (6) timeline and process for the negotiation and execution of any other necessary interim agreements and the MCA.

The Joint Work Plan to be undertaken pursuant to this Agreement is described in Exhibit B. This Joint Work Plan is subject to change and adjustment as agreed upon by the Parties.

F. General Project Principles and Agreements to Implement Project Purpose.

1. Mutual Intent to Cooperate. Both Parties agree that the successful completion of an MCA between the Parties and ultimately the DTX Project requires their full and mutual good faith cooperation. The Parties agree to work together cooperatively to complete all work needed to meet critical milestones in the Accelerated Work Plan and documentation requirements, and negotiate and seek Board approval of an MCA by October 2024 prior to TJPA’s submission of a FFGA to FTA.

2. Retained Jurisdictional and Approval Authority. TJPA has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program, pursuant to California Public Resources Code section 5027.1. Caltrain is a commuter rail operator subject to safety regulations and oversight by the Federal Railroad Administration (FRA) pursuant to 49 C.F.R. part 209-244, the Federal Transit Administration (FTA) pursuant to 49 C.F.R. pt. 673 and the California Public Utilities Commission (CPUC) pursuant to Public Utilities Code section 309.7. Accordingly, Caltrain has jurisdictional authority over elements of the DTX Project affecting railroad operations and maintenance (which Caltrain intends to exercise through the joint decision-making authority as described in Section II, subject to the Dispute Resolution process described in Section II(E) below). As a rail operator, Caltrain will have final Approval over all decisions directly impacting safety and security (with such Approval not to be unreasonably withheld and to be exercised in a timely manner).
3. Project Principles. The Parties agree that the design and construction of the DTX Project shall be based on the following principles:
 - a. The DTX Project will be delivered on time and within budget.
 - b. The DTX Project design, operations, and funding must be compatible with and connected to Caltrain's Core System and must be consistent with Caltrain's 2040 service vision and Caltrain Design Criteria and Standards.
 - c. Safety and customer experience must be the primary focus of all planning, design, construction, and operations and maintenance decisions of the DTX Project.

II. DECISION-MAKING PROCESSES

A. **Integrated Project Delivery Team.**

Staff and consultants from Caltrain will be integrated into an Integrated Project Delivery Team (“IPDT”) for design of the DTX Project during the Term. This will be the primary staff-level body with the responsibility to manage the DTX Project so that it can be delivered within the approved scope, budget, and schedule; nothing herein, however, is intended to supersede the TJPA Board’s authority as the legislative body of TJPA or the Peninsula Corridor Joint Powers Board’s authority as the legislative body of Caltrain.

1. Leadership and Authority. TJPA and Caltrain will each designate a Project Director who will be delegated by their respective Executive Directors with the authority to represent the Parties for the purposes of design and other key tasks during the Term of this Agreement. The Caltrain Project Director will have primary responsibility over matters within the IPDT scope affecting railroad operations, railroad maintenance, safety, and security. The Project Directors, as representatives of their respective agency, will co-lead the IPDT and work cooperatively to resolve open issues regarding the DTX Project, and will be responsible for informing management at their respective agency of critical issues. The Project Directors will make decisions unanimously with the exception of decisions described in subsection 4(a)(v) below; when unanimous decision-making is not possible, the Project Directors will identify issues requiring escalation of decision making as described in Section II(E). They will also oversee the work undertaken by their respective agencies, provide day-to-day management and oversight of the DTX Project during this Agreement and will strive to ensure that the Joint Work Plan described in Exhibit B is completed on time and within budget.
 - a. Project Directors as Primary Point of Contact. The Project Directors will be the primary points of contact for building consensus and resolving issues under this Agreement, and for managing amendments to this Agreement including bringing amendments to the Boards of both agencies when Board approval is required.
 - b. Authority to Approve Change Orders. Caltrain’s Project Director must concur with any design and construction Change Orders that affect railroad operations, railroad maintenance, safety, and security and will have the authority to issue such concurrence on Caltrain’s behalf. If Caltrain does not concur with a Change Order recommended by TJPA, the matter will be referred to the Dispute Resolution process described below in Section II(E).
 - c. Caltrain Approval of Safety Standards. For all proposed design Change Orders that impact the safety of the Caltrain Core System, Caltrain holds final Approval authority at its sole discretion, which shall not be unreasonably withheld and will be exercised in a timely manner.

2. Composition. The IPDT will be composed of staff and consultants engaged by TJPA as well as roles to be filled by Caltrain as described in Exhibit C, Caltrain IPDT Roles and Staffing Plan.
3. Terms of Reference. The Parties will develop an IPDT Terms of Reference defining how best to work together. The Terms of Reference will include IPDT protocols, meetings, internal workflows, internal decision-making processes, staff responsibilities, and assignments of lead responsibility according to function. The Parties agree to review the efficacy and efficiency of the IPDT structure after six months of implementation, and to amend the Terms of Reference of the IPDT consistent with the outcome of that review.
4. Joint Decision-Making.
 - a. Review of Design Submittals. The Parties will continue to perform support and review activities needed to progress the DTX Project in a timely manner, as follows:
 - i. Through the IPDT, Caltrain and TJPA will review the Basis of Design document and then current 30%, 65%, 100% and construction packages. For alternative project delivery methods, the Parties agree to follow a review of design submittal process with equivalent milestones and process to the milestones described herein.
 - ii. For those designs that Caltrain determines will not impact railroad operations, railroad maintenance, safety, or security, Caltrain will advise TJPA in writing that Caltrain declines to comment.
 - iii. TJPA will incorporate all Caltrain comments or Approval conditions related to railroad operations, railroad maintenance, safety, and security into revised design documents. If the Parties are unable to agree on integration of comments, the Parties will follow the Dispute Resolution process described below in Section II(E).
 - iv. TJPA may rely on any written comments received from Caltrain if and only if Caltrain designates such as "Caltrain Final Comments." The Caltrain Project Director will have authority to designate comments as "Caltrain Final Comments."
 - v. Caltrain has final Approval where, in its sole discretion, the design issue impacts the safety of railroad operations, or increases railroad operations, railroad maintenance or capital renewal costs of the Caltrain Core System, provided that Caltrain shall not unreasonably withhold its Approval and that such Approval will be exercised in a timely manner.
 - vi. For matters not addressed by the IPDT, TJPA will coordinate with Caltrain to allow sufficient time to mobilize personnel for review. For more complex deliverables or matters that raise

significant issues, Caltrain will, upon receipt of the draft, advise TJPA of the amount of time needed to adequately respond.

- b. Additional Caltrain review. TJPA must provide reasonable time for Caltrain review and Approvals for matters beyond the authority of the IPDT. These include but are not limited to the following items: Design Exceptions, Technical Memoranda and Plans, FTA Deliverables, and Environmental Documents.
 - c. Caltrain involvement in selection of the PMCM Consultant. TJPA is in the process of procuring a PMCM Consultant through a competitive process. TJPA will work with Caltrain to include minimum qualifications in the solicitation for two PMCM roles critical to Caltrain: (i) the Progressive Design Build (PDB)/Construction Manager/General Contractor (CMGC) Procurement Lead, and (ii) the Interface and Integration Lead. . The Caltrain Project Director or designee will participate in evaluation of PMCM Consultant proposals. The Caltrain Project Director or designee will also have a decision-making role in negotiations with the highest-ranked proposer, including the opportunity to give feedback on candidates identified in the proposals.
5. Technical Requirements and Design Standards. Caltrain has provided TJPA its design criteria (2020 release) and related requirements, which TJPA has incorporated into the DTX Design Criteria. Where Caltrain does not have applicable design criteria, additional DTX Design Criteria shall be applied if approved by Caltrain and TJPA will cover any costs associated with Caltrain work to develop the relevant standard.
6. Variiances. TJPA will not apply any Caltrain standards or guidance developed prior to the Caltrain Board’s 2019 approval of the 2040 Service Vision without written confirmation from Caltrain. Variiances are permitted if approved by the Caltrain Project Director.
7. Preparation for Construction
- a. Review of Procurement Documents
 - i. The IPDT will manage all aspects of the preparation for construction in accordance with the DTX Procurement Plan.
 - ii. Through the IPDT, Caltrain will review drafts of request for qualifications, invitations for bids and requests for proposals, and addenda for all construction projects and modifications thereof and formally indicate its Approval/no objection or provide comments within a period agreed by the Parties.
 - iii. If Caltrain has indicated it will provide comments, Caltrain will provide its comments to TJPA within a period agreed upon by the Parties.
 - b. Project Delivery Approaches. Caltrain Approval rights and responsibilities established under this Agreement will be applied to Construction Manager/General Contract (“CMGC”) and Progressive

Design Build (“PDB”) project delivery methods, or other methods as adopted for project delivery.

- c. Selection Committees. Caltrain shall actively participate as a voting member(s) on selection committees to evaluate proposals and review bids for all construction contracts, except those that Caltrain determines will not impact their railroad operations, railroad maintenance, safety, or security.

B. Governance.

1. Engagement and Integration with the IPMT and ESC. The IPDT will report to the Integrated Program Management Team (IPMT) and the Executive Steering Committee, as such may be amended or reconfigured, on progress.
2. Role of Boards. Each Party agrees to participate in joint TJPA-Caltrain briefings of the other Party’s boards and committees about the subject matter of this Agreement, when invited to do so.

C. Partnering.

The Parties agree to participate in joint partnering sessions, focused on:

1. Interests. Defining common interests via the agencies’ respective purposes, missions, and goals for the DTX Project
2. Goals. Creating a common set of goals for the DTX Project that reflect the interests of both Parties.
3. Communication. Establishing a communication framework for disciplined, timely and productive project discussions over the course of the DTX Project.

D. Cooperation With Third Parties.

The Parties agree to cooperate on communications and submittals to funding and regulatory agencies related to the subject matter of this Agreement. The Parties also agree to coordinate to review and approve agreements with third Parties that impact this Agreement.

1. Reporting.
 - a. FTA Reporting. TJPA will be responsible for reporting to the FTA on the DTX Project. TJPA and Caltrain will partner on developing any documentation required from Caltrain related to the subject matter of this Agreement, with TJPA sharing the draft with Caltrain before submittal, with sufficient review time.
 - b. Other Financial Reporting Requirements. The Parties will provide timely information to each other as requested to satisfy financial reporting requirements for their Boards and/or funding partners related to the subject matter of this Agreement.
 - c. Reporting Material. Caltrain will be responsible for providing to TJPA material pertaining to Caltrain’s railroad operation, railroad maintenance, safety, and security for reporting purposes; TJPA will utilize and rely on the material Caltrain provides unless TJPA provides

notice to Caltrain in advance of concerns with the Caltrain material and provides an opportunity for the Parties to meet and confer to resolve.

2. Review of Third-Party Agreements.

- a. Opportunity to Review. Each Party will ensure that the other Party has the opportunity to review and comment on any proposed third-party agreements, including those with Caltrans, CHSRA, MTC, SFCTA, SFOEWD, CPUC, Prologis, utility companies, or any other third Parties, to the extent such agreements include any financial, operational, or real property obligation that may be transferable to the other Party or could have an impact on the other Party's current or future rights, obligations, and operations.

E. Escalation and Dispute Resolution Process.

Disputes arising under this Agreement that cannot be resolved through the IPDT will follow the procedures set forth in this Section. The process described below will be invoked after the Project Director from either Party has submitted an invocation to the Project Director of the responding Party.

1. Invocation.

- a. Written Notice. The Project Directors will have the authority to invoke the Dispute Resolution process by providing written notice identifying the subject of the dispute to the Project Director for the responding Party.
- b. Method of Resolution. Although notice of the dispute shall be provided in writing, the Project Directors may attempt to resolve the dispute either verbally or in writing.

2. Urgent Matters.

- a. Initial response. For matters designated as "urgent" by the initiating Party, the responding Party shall respond within forty-eight (48) hours of receipt of notice from the initiating Party.
- b. Diligent efforts. If within 15 days or less, one or both staff representatives conclude that they cannot resolve the dispute after making diligent efforts to do so, they shall notify one another and their respective Executive Directors and they shall provide their respective Executive Directors with all relevant information.
- c. Executive Director Response. The Executive Director of the responding Party will have forty-eight (48) hours after receipt of notice from the staff representative(s) that staff have been unable to resolve the dispute to respond to any matter initiated by the other Party and designated "urgent."

3. Non-Urgent. If the matter is not designated as "urgent" by the initiating Party, then the responding Party shall respond within five (5) business days. If one or both staff representatives conclude that they cannot resolve the dispute after making diligent efforts to do so, they shall notify one another and their

respective Executive Directors and they shall provide their respective Executive Directors with all relevant information.

4. Escalation to Executive Directors. The Executive Directors shall make a good faith effort to resolve the dispute. If the dispute or disagreement is not resolved by the process as described in the paragraphs above, the Parties may seek authorization from their respective Board of Directors to proceed with any method of non-binding alternative dispute resolution, including but not limited to a joint meeting of the Boards, mediation, or non-binding arbitration.
5. No Limitation of Additional Rights. The Parties are committed to working together diligently to avoid litigation as a method of dispute resolution; however, nothing herein will foreclose or limit the ability of either Party to pursue judicial remedies.

F. Access To Information.

The Parties agree to share project information in a timely and comprehensive manner.

1. Material Documents. TJPA will promptly store all material documents related to the work under this Agreement received by TJPA in a File Sharing Application managed by TJPA and accessible to Caltrain. The Program Management Program Controls Consultant (“PMPC”) (or the successor PMCM) will update this File Sharing Application. The Parties agree that notifications will be provided to a designated point of contact via email any time new material documents are stored on the designated file sharing site.
2. Correspondence. The Parties agree that all formal communication between TJPA and Caltrain relating to this Agreement, between TJPA or Caltrain and a funding or regulatory agency relating to this Agreement, and all decision documents related to work under this Agreement will be formalized in writing and stored on the designated File Sharing Application, with full access granted to both Parties.
3. External Communications and Project Outreach. The Parties agree to cooperate on external communications and outreach efforts related to the subject matter of this Agreement. To the extent applicable at this stage of the DTX Project, in order to ensure consistency and accuracy of information, TJPA will be designated as the lead responsible for providing DTX Project construction-related communications and outreach, while Caltrain will be designated as the lead responsible for providing communications and outreach regarding operational aspects including closures or disruptions to Caltrain service, opening/service start updates, signage and customer information systems, integration with Caltrain service, safety, system maps, how to ride, related press releases, and other items of a similar nature.

III. RESOURCES, BUDGET, AND REIMBURSEMENT

A. **General Agreements**

1. Reimbursement for Costs. TJPA will reimburse Caltrain for reasonable and actual Caltrain staff and consultant costs for the DTX Project during the Term of the Agreement as described below.
2. Efficiency. The Parties agree to work efficiently, minimize duplication of effort, and support project budget constraints.

B. **Identification of Resource Needs**

1. Staffing Plan. Caltrain's staffing plan to implement the Joint Work Plan through the Term is attached here as Exhibit C and incorporated by reference herein. Costs relating to Caltrain's role on the DTX Project Executive Steering Committee and participating in the DTX Project's Integrated Project Management Team under the MOU are not reimbursable under this Agreement.
2. Other Costs. TJPA will provide office space to the joint project team at no cost to Caltrain.

C. **Reimbursement and Budget**

1. Budget and Invoicing. TJPA will reimburse Caltrain for 100 percent of its reasonable and actual staff and consultant costs for the DTX Project during the Term of this Agreement (the "Eligible Costs") in an amount not to exceed the Budget, except as specified below. Eligible Costs will include Indirect Cost Allocation Plan ("ICAP") rate of 3.89 percent (FY23 rate) (as may be updated on an annual basis).
 - a. Rates. TJPA shall compensate Caltrain at actual hourly labor rates for staff and consultants. Caltrain will provide TJPA with a schedule of hourly labor rates prior to submission of the first invoice and will provide updates to the rate schedule in advance of any changes.
 - b. Budget. The not-to-exceed budget for the contemplated Joint Work Plan and contemplated Term is \$5,018,239 ("Budget"), allocated as \$3,638,370 for work in FY 2023-2024 (July 1 – June 30) and \$1,379,869 for work in FY 2024-2025 (July 1 – June 30), as described in Exhibit D. In recognition that the initial amount is the current best estimate, the Parties agree that when Caltrain has invoiced for 75% of the total Budget, the Parties will meet to determine whether to revise the Budget or scope in the Joint Work Plan described in Exhibit B.
 - c. Change in Scope. To the extent the scope of work is increased from what is described in the Joint Work Plan or the Term is extended, the Parties will work together to establish workplans and estimates for subsequent budget years to ensure that budget development includes Caltrain staff and consultant costs; the Parties' obligations to incur and reimburse such costs, however, require approval of the Parties' respective legislative bodies, each in their sole discretion.

- d. Right to Suspend Work. If the Budget is exceeded, or Caltrain anticipates that it will be exceeded, and the parties have not reached agreement on an increase to the Budget, Caltrain may suspend its on-going work under this Agreement, provided that Caltrain's Project Director first notifies TJPA's Project Director by e-mail and TJPA declines to add funds to the Budget sufficient to reimburse Caltrain for Eligible Costs Caltrain will incur to complete its work under this Agreement. TJPA may prevent Caltrain from suspending its work either in full or in part by dedicating additional funds to those allocated in the Budget.
- e. Invoices. Caltrain will bill TJPA on a cost reimbursable basis. Caltrain will invoice TJPA quarterly, providing invoices with auditable documentation for Caltrain staff hours and consultant costs and in a form reasonably acceptable to TJPA. Notwithstanding the foregoing, all invoices furnished for work in a Fiscal Year must be received by TJPA within 30 days after the close of the Fiscal Year specified by TJPA. TJPA will pay invoiced amounts within 45 calendar days after receipt from Caltrain (or as soon thereafter as possible); in no event will TJPA be liable for interest or late charges for any late payments.
- f. Suspension for Nonpayment. Caltrain may suspend its on-going work under this Agreement if past due payments are not made within 60 calendar days after Caltrain sent the invoice, provided that Caltrain first follows the notice and confer procedures described in Section II(E).
- g. Billing Disputes. If TJPA in good faith disputes any portion of an invoice, then within 30 calendar days after receipt of the invoice, TJPA will provide Caltrain written notice of the amount disputed and the reason for the dispute, and the Parties will use good faith efforts to reconcile the dispute as soon as practicable. TJPA will have no right to withhold payment for Eligible Costs incurred by Caltrain that are consistent with this Agreement before any termination of this Agreement.

IV. **DESIGN APPROACH FOR CERTAIN WORK DURING THE TERM**

A. General Agreements.

Critical Milestones. The Parties agree to work together cooperatively to complete all work needed to meet critical milestones in the Accelerated Work Plan and documentation requirements. One element of that effort is design and procurement preparation for the Caltrain 4th and King Yard DTX Preparation.

B. Scope and Approach.

Scope. The scope of the Caltrain 4th and King Yard DTX Preparation design and procurement preparation work is summarized as:

- a. **Package A:** Stage 1 of the 12-stage process – to clear the staging and access area necessary for the DTX PDB Contractor.
 - b. **Package B:** Stage 2-12 of the 12-stage process – to realign the Caltrain electrified rail service in the Railyard to allow for maximum operating capacity while the DTX Project is under construction and ultimately connect the extension.
1. Enabling Works Excluded. The scope of the design and procurement preparation work does not include any Enabling Works, or any modifications to Caltrain’s existing infrastructure in the Railyard or on the mainline.
 2. Design Contract. With Caltrain’s concurrence, TJPA contracted with Parsons to complete 30% design for Package A and Package B. The work is anticipated to be completed in January 2024. TJPA is funding project management oversight by Caltrain (“Caltrain PMO”) under the DTX Rail Program Enabling Works Planning Memorandum of Agreement (“Enabling Works MOA”), dated March 2, 2023.
 3. Design Approach. The Parties agree as follows:
 - a. Parsons continues design of Package A through 100% design with Caltrain PMO continuing to oversee the work as described in the Enabling Works MOA.
 - b. The decision whether to proceed with Parsons design of Package B through 60% design with Caltrain PMO continuing to oversee the work as described in the Enabling Works MOA will be made following completion of the Project Delivery Analysis.
 - c. The Caltrain PMO scope is included in the Enabling Works MOA, which will continue to be the mechanism for reimbursement of the Caltrain PMO during the term of this Agreement, until it is superseded by a subsequent agreement.

V. **ACCESS TO RAILYARD FOR LIMITED WORK**

A. **General Agreements**

1. Previous Access. Caltrain has previously provided TJPA certain limited access to the Railyard to perform geotechnical investigation and survey work related to the DTX Project pursuant to Caltrain's standard form of Service Agreements and Right of Entry Permit Agreements. During the Term, TJPA anticipates requiring additional access to the Railyard to support project design.
2. Cooperation. During the Term, Caltrain will cooperate in arranging for TJPA and its consultants to receive timely access to the Railyard for such purposes, consistent with Caltrain's standard requirements related to protection of operations and safety and pursuant to Caltrain standard form of Right of Entry agreement.

VI. **ADDITIONAL AGREEMENTS**

A. General Principles and Agreements

1. Cooperation. The Parties agree to cooperate in negotiating any necessary interim agreements and the MCA.

B. 4th and King Yard DTX Preparation, Package B Agreement

1. Consistent with Section IV(B)(3)(b), the Parties will cooperate in negotiating an agreement for the contracting and bidding of the 4th and King Yard DTX Preparation, and Package B, and will strive to present the agreement to their respective Boards by March 31, 2024.

C. Master Cooperative Agreement

1. The Parties will cooperate in negotiating an MCA, and will strive to present the agreement to their respective boards by September 2024.

D. Additional Interim Agreements. The Parties agree to cooperate to prepare a schedule for the negotiation and execution of any additional interim agreements as may be necessary to advance the DTX Project.

VII. **TERMS**

A. **Amendments and Modifications.**

From time to time, by mutual agreement, the Parties may reopen, in whole or in part, elements of this Agreement. This Agreement may not be changed, modified, or amended, in whole or in part, except in a writing signed by an authorized representative of each Party.

B. **Notices.**

Unless otherwise indicated elsewhere in this Agreement, any notice given under this Agreement must be in writing and will be deemed to have been given upon (a) hand delivery, against receipt, (b) one (1) day after being deposited with a reliable overnight courier service, or (c) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

To Caltrain: Michelle Bouchard
Executive Director, Caltrain
1250 San Carlos Ave
San Carlos, CA, 94070
Phone: (650) 508-6420
Email: bouchardm@caltrain.com

With a copy to:
James C. Harrison, General Counsel
1901 Harrison Street, Suite 1550
Oakland, CA 94612
Phone: (510) 346-6203
Email: jharrison@olsonremcho.com

To TJPA: Adam Van de Water
Executive Director, Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
Phone: (415) 597-4032
Email: avandewater@tjpa.org

With a copy to:
Deborah Miller, Legal Counsel
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Phone: (415) 552-7272
Email: miller@smwlaw.com

or to such other address as either Party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the Parties, copies of notices may also be given by electronic mail, to

the address listed above, or such other address as may be provided from time to time. However, neither Party may give official or binding notice by email.

C. Indemnification and Insurance.

1. TJPA's Indemnification. TJPA shall indemnify, defend, and hold harmless Caltrain, its Board of Directors, representatives, agents, or employees 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), incurred by reason of any act or failure to act of TJPA, its officers, employees or agents, including any consultant retained by TJPA, in connection with this Agreement, except those arising by reason of the negligence, recklessness, or willful misconduct of Caltrain, its officers, employees and agents.
2. Caltrain's Indemnification. Caltrain shall indemnify, defend, and hold harmless TJPA, its Board of Directors, representatives, agents, or employees 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), incurred by reason of any act or failure to act of the Caltrain, its officers, employees or agents, including any consultant retained by Caltrain, in connection with this Agreement, except those arising by reason of the negligence, recklessness, or willful misconduct of TJPA, its officers, employees and agents.
3. Expenses and Costs. The Parties agree that the indemnifying Party will bear all expenses and costs and will pay all settlements or final judgments arising out of any claim, action or proceeding involving the injury to and/or death of any person or damages to or any loss of any property arising from any indemnification obligation of the indemnifying Party under Section VII(C)(1)-(2) above, including the costs of defense. Should a claim, action or proceeding of any nature be brought at any time against a Party entitled to indemnification pursuant to Section VII(C)(1)-(2) above for injury, death, damage or loss, the Party entitled to indemnification will promptly provide notice to the indemnifying Party of such claim, and will tender the defense of such claim to the indemnifying Party which will thereafter provide all such defense, indemnity, and protections as are necessary under the provisions of this Agreement. The Party entitled to indemnification will provide such additional information or assistance as is reasonably requested by the indemnifying Party to assist in the defense, prosecution, or settlement of any such claim. The indemnified Party may engage counsel of its choice to defend said indemnified Party with the consent of the other Party, which consent will not to be unreasonably withheld.
4. Other Provisions on Indemnity. The foregoing provisions regarding indemnification are included pursuant to the provisions of Section 895.4 of the Government Code and are intended by the Parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of the Government Code.

D. Insurance.

1. Parties agree to purchase and maintain appropriate levels of insurance for the duration of the DTX Project.
2. TJPA agrees that it will name or cause to be named Caltrain as an additional insured, indemnified Party and/or loss payee (pertaining to Caltrain property) on any policy of insurance purchased by TJPA and in any indemnity provisions in all agreements between TJPA and design professionals, contractors, or any other Party with which TJPA has an agreement that involves the DTX Project.

E. Force Majeure.

1. General. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine, restrictions, casualties, acts of God, acts of the public enemy, epidemic, pandemic, government restrictions on priorities, freight embargoes, shortage of labor or materials, unusually inclement weather, lack of transportation, court order, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform.
2. Extension. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the commencement of the cause and such extension is not rejected in writing by the other Party within thirty (30) days of receipt of the notice. Time of performance under this Agreement may also be extended by mutual written agreement, signed by both Parties.

F. Termination.

1. Termination for Cause. The Parties agree that if either Party is in default of this Agreement and fails to remedy this default within sixty (60) business days after receipt from the other Party of written notice of such default, the non-defaulting Party may, in its discretion, terminate this Agreement. The Parties further agree that, for purposes of this section, the term "default" includes, but is not limited to, the performance of work in material violation of the terms of this Agreement; abandonment of the property, material failure of either Party to perform the services or other required acts within the time specified in this Agreement or any extension thereof; refusal or failure to provide proper workmanship; and the performance of this Agreement in bad faith. Upon such termination for cause, the Parties agree that the non-defaulting Party shall be entitled to recover from the defaulting Party all associated damages and costs actually incurred and attributable to the termination.
2. Termination for Convenience. The Parties agree that either Party may terminate this Agreement, without cause, by giving written notice to the other Party with 30-days advance notice. Upon such termination for convenience, TJPA and Caltrain agree that the terminating Party shall be liable to the non-terminating Party for any outstanding obligations under this Agreement incurred prior to the date of termination.

3. Force Majeure Termination. The Parties agree that either Party may terminate performance under this Agreement in its discretion for unforeseen causes beyond the control and without the fault or negligence of said Party, including those meeting the definition of force majeure. The Parties agree that the Party seeking Force Majeure termination must provide written notice at least 30 days in advance of the date for termination.
4. Certain Obligations Survive Termination. Upon termination, the Parties' respective rights and obligations under this Agreement will cease, except that such termination will not relieve TJPA of its reimbursement or other obligations incurred with respect to: (1) Eligible Costs incurred with respect to work performed or reimbursable liabilities incurred by Caltrain before the date of termination; (2) Caltrain costs arising after termination of this Agreement in connection with Caltrain work that is underway and are not practicable to stop, and for which Caltrain will incur future costs related to either completion of Caltrain responsibilities or contracts that have been entered into; (3) Caltrain costs of restoration or return of impacted Caltrain improvements back to functionality as determined by the Caltrain Board of Directors or designee; (4) the indemnities and waivers set forth in Section VII(C); and (5) those terms that expressly survive termination.
5. Within 60 days of receipt of notice of termination, Caltrain will submit any outstanding invoices for costs incurred prior to termination to TJPA, and TJPA will use best efforts to reimburse Caltrain for costs incurred consistent with this Agreement within 45 days after receipt.

G. General Conditions.

1. Further Assurances. Each Party will execute and deliver to the other all such additional instruments or documents as may be necessary to carry out this Agreement, or to assure and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each Party's governing body.
2. Non-Liability of Parties' Officials and Employees. No elected or appointed board, commission, member, officer, director, or employee, of either Party will be personally liable to the other Party, or any successor in interest, in the event of any default or breach of this Agreement, or for any amount which may become due on any obligation under this Agreement. This provision will survive termination or expiration of this Agreement.
3. No Joint Liability. Nothing in this Agreement may be construed as giving a Party the right or ability to bind the other Party and nothing in this Agreement may be construed to create any joint liability with regard to, or as a result of, the activities undertaken by the other Party or its Agents. All officers, directors, employees, representatives, and Agents of a Party will remain the officers, directors, employees, representatives, and Agents of that Party and will be subject to the laws, procedures, rules, and policies governing such Party.
4. No Implied Waiver. No failure by either Party to insist on the strict performance of any obligation of the other Party under this Agreement or to exercise any right, power, or remedy after a breach of this Agreement will constitute a

waiver of any breach or of term, covenant, or condition. No acceptance of full or partial payment by Caltrain while TJPA is in default will constitute a waiver of the default by TJPA. No express written waiver of any default or the performance of any provision if this Agreement will affect any other default or performance, or cover any other period of time, other than the default, performance, or time specified in the express waiver. One or more written waivers of a default or the performance of any provision of this Agreement will not be deemed to be a waiver of a subsequent default or performance. The consent of TJPA or Caltrain given in one instance under the terms of this Agreement will not relieve the other Party of any obligation to secure the consent to any other or future instance under the terms of the Agreement.

5. Applicable Law. This Agreement must be interpreted under and pursuant to the laws of the State of California. The Parties agree that the jurisdiction and venue of any dispute between the Parties will be the Superior Court of California of the County of San Francisco or San Mateo County, as appropriate.
6. Severability. If any term, provision, covenant, or condition of this Agreement or its application to any person, entity, or circumstance is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, and conditions, or the application of the provision to persons, entities, or circumstances other than those to which it is invalid or unenforceable, will not be affected by that finding, and each other provision of this Agreement will be valid and enforceable to the full extent permitted by Law, except to the extent that enforcement of this Agreement without the invalidated provision would be unreasonable or inequitable under all the circumstances or would frustrate a fundamental purpose of the Agreement.
7. Cumulative Remedies. All rights and remedies of either Party set forth in this Agreement are cumulative, except as otherwise specifically provided in this Agreement.
8. No Assignment. The Parties may not assign their rights or obligations under this Agreement without the other Party's prior written consent.
9. Third Party Rights. Nothing herein may be considered as creating any rights and/or obligations by any of the Parties to this Agreement to any third Parties, beyond those otherwise required and established by Law.
10. Audit of Records. The Parties agree to establish and maintain records pertaining to the fiscal activities of the DTX Project. Each Party will have the right to inspect the other Party's books, accounts, data, and any other records related to the DTX Project. Neither Party will dispose of any of the aforementioned records for at least three (3) years after the conclusion of the DTX Project. This provision will survive termination or expiration of this Agreement.
11. Interpretation. The following rules of construction apply to this Agreement: (1) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "includes(s)" or "including", or similar words will not be construed to limit any general term, statement, or other matter in this Agreement or any of its attached exhibits,

whether or not language of non-limitation are used. “Include(s)” means “include(s) without limitation” and “include(s) but not limited to,” and the word “including” means “including without limitation” and “including but not limited to” as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a Party mean the named Party and its successors and assigns. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time. The Parties’ exercise of discretion will be reasonable unless stated otherwise. (2) Headings are for convenience only and do not define or limit any terms. References to a specific document or exhibit mean the document, together with all exhibits, appendices, and schedules, as supplemented, modified, amended, or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated. All exhibits, appendices, and schedules to this Agreement are hereby made a part of this Agreement. (3) This Agreement (including all of the attached appendices and exhibits, which are made a part of this Agreement by this reference) represents the full, complete, and entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other communications, representations, proposals, understandings, or agreements, whether written or oral, between the Parties with respect to such subject matter. (4) This Agreement has been drafted through a cooperative effort of TJPA and Caltrain, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party will be considered the drafter of this Agreement, and no presumption or rule that an ambiguity be construed against the Party drafting the clause will apply to the interpretation or enforcement of this Agreement.

12. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute a single agreement. A signature delivered on any counterpart by facsimile or other electronic means will for all purposes be deemed to be an original signature to this Agreement. The term “electronic means” means one that is executed by applying an electronic signature using technology mutually acceptable to the Parties.
13. Effective Date. The “Effective Date” of this Agreement is September 1, 2023, conditioned on all of the following: (1) TJPA and Caltrain have executed this Agreement; and (2) following authorizing resolutions by both Parties’ Boards of Directors.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date by their duly authorized representatives.

TRANSBAY JOINT POWERS AUTHORITY, a joint
exercise of powers authority

Peninsula Corridor Joint Powers Board

By: _____
Adam Van de Water
Executive Director

By: _____
Michelle Bouchard
Executive Director

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

Peninsula Corridor Joint Powers Board
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

Secretary, Caltrain Board

APPROVED AS TO FORM FOR TJPA:

APPROVED AS TO FORM FOR CALTRAIN:

By: _____
Deborah Miller
Legal Counsel

By: _____
James C. Harrison
General Counsel to the Peninsula Corridor
Joint Powers Board

List of Exhibits

Exhibit A – Map of DTX Project

Exhibit B – Joint Work Plan (September 1, 2023 – September 30, 2024)

Exhibit C – Caltrain IPDT Roles and Staffing Plan

Exhibit D – Budget (September 1, 2023 – September 30, 2024)

Exhibit A Map of DTX Project

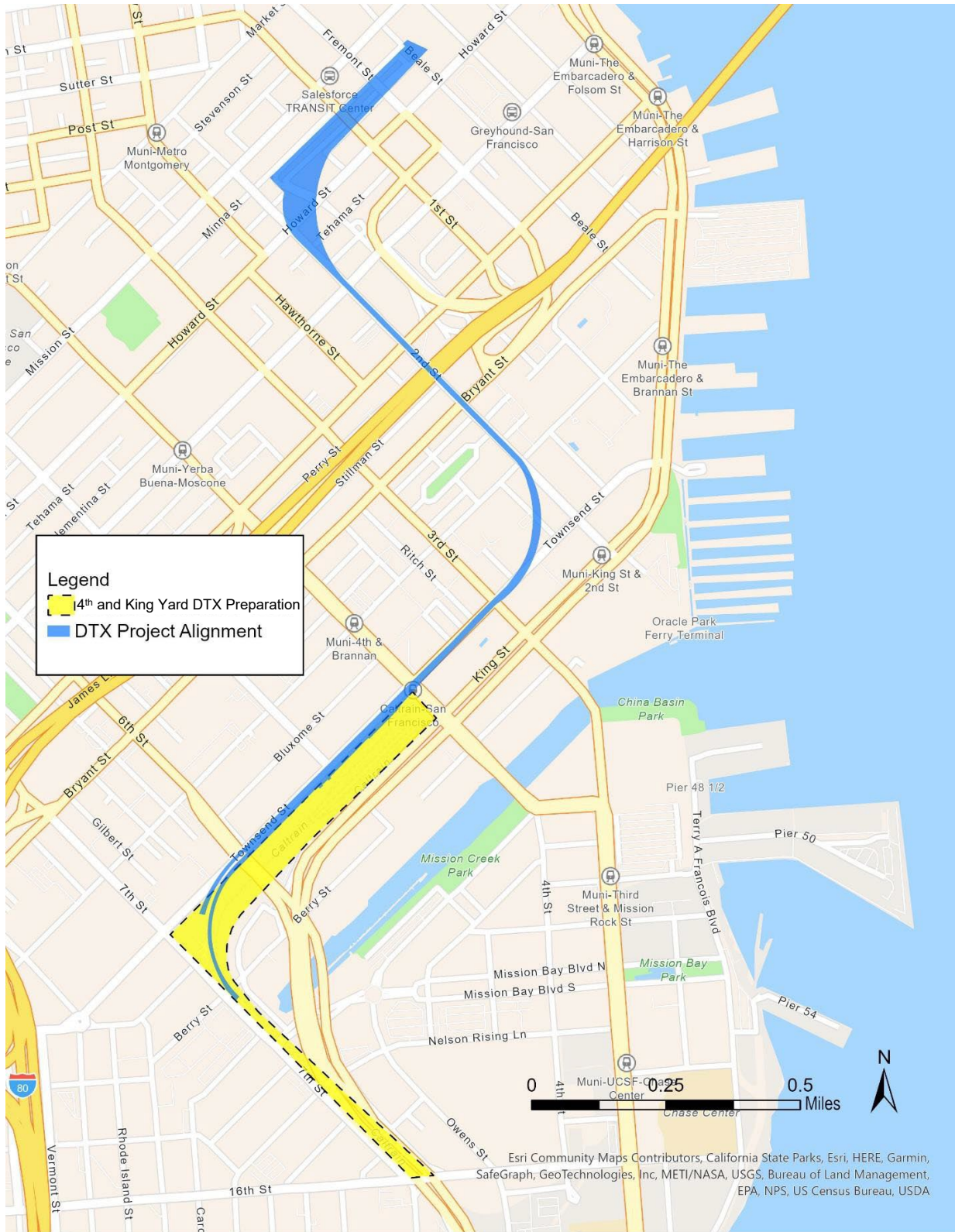


EXHIBIT B

**Joint Workplan to be completed by both Parties from September 1, 2023 – September 30, 2024
(Excludes 4th and King DTX Yard Preparation (4KY) except as noted)**

Workstream	Scope of Work
1. Integrated Project Delivery Team (IPDT) participation	Serve on an IPDT for design of the DTX Project during the Term
2. Design of 4 th & King Yard DTX Preparation (4KY)	TJPA contractor Parsons to continue design of Package A through 100% design with Caltrain PMO continuing to oversee the work as described in the Enabling Works MOA; Decision whether to proceed with Parsons design of Package B through 60% design with Caltrain PMO continuing to oversee the work as described in the Enabling Works MOA will be made following completion of the Project Delivery Analysis. (Note that this is only for design work, none of project delivery method, contract packaging, real estate, nor construction have been agreed to yet, anticipated in Workstream 7, below)
3. Procurement Document Development/Contractor Engagement.	Prepare procurement documents and begin contractor selection for: <ul style="list-style-type: none"> a. Construction Manager/General Contractor packages <ul style="list-style-type: none"> i. Stations Fit Out (includes 4th and Townsend) ii. Track and systems b. Progressive Design Build package <ul style="list-style-type: none"> i. Main Civil and Tunnel c. DBB package (other than 4KY) <ul style="list-style-type: none"> i. Utility Relocation ii. Building Demolition and Replacement
4. GEC/Planning support	Conduct studies to support design, procurement, environmental and grant documents: <ul style="list-style-type: none"> a. Value Engineering/Scope refinement b. Completion of Load Flow Analysis c. Scoping of Passenger simulations at Salesforce and 4th/Townsend Stations d. 6th St Sewer relocation and design e. Operations planning f. GBR (Geotech baseline report) g. Ridership and revenue analysis including evaluation of project demand and project capacity (with SFCTA) h. Additional studies to support project activities.
5. CIG program/federal funding support	Complete work efforts to support: <ul style="list-style-type: none"> a. FTA deliverables
6. MCA development/negotiation/completion	Reach agreement on a comprehensive MCA, including: <ul style="list-style-type: none"> a. Temporary and permanent real estate actions within Caltrain right-of-way b. Scope of the Project c. IPDT implementation d. Rail Activation plan e. Asset disposition f. Operations and maintenance g. Revenue allocation

Caltrain 7-31-23

TJPA 8-1-23

Workstream	Scope of Work
7. Other interim agreement development/negotiation/ completion	Reach interim agreements supporting progress toward a comprehensive MCA, as needed, including on the DTX 4 th & King Yard Preparation

Exhibit C

Caltrain PDT Role Descriptions and Staffing Plan

Caltrain Project Director (100% from December 2023)

The Caltrain Project Director (CPD) will be Caltrain's most senior member of the Portal Project Delivery Team (PDT). The CPD will share decision-making with the TJPA Project Director. The CPD will represent the direction and requirements of the Caltrain Executive Director and JPB within the PDT and will represent the Portal project priorities within Caltrain. The CPD will have significant coverage of the Procurement, GEC/Planning support, and Agency Coordination workstreams listed in Exhibit B. The CPD may also have some involvement in the MCA and interim agreements workstream listed in Exhibit B.

Level Boarding (Oct 2023 – Dec 2023, 25%)

The Level Boarding lead will be responsible for all activities related to delivering on- and off-vehicle level boarding, including the design, installation, and testing of rollingstock equipment, as well as overseeing any design changes needed for station infrastructure. The Level Boarding lead will be primarily focused on the Procurement workstream identified in Exhibit B, with the expectation that level boarding retrofit activities will commence in 2025 and activities will be reimbursed by the MCA.

Caltrain PDB and CMGC Procurement Lead (Oct 2023 – March 2024 at 50%)

The Caltrain PDB and CMGC Procurement Lead represents Caltrain in the cooperative development of the procurement packages. The Lead will work alongside similar TJPA, GEC, and PMCM leads in contractor engagement, evaluation, and feedback. The Lead will also ensure that the packages proceed in a manner that is consistent with lifecycle Caltrain needs, including access, maintenance, and operations. The extent of the Lead's involvement will correlate with the outcomes of asset disposition negotiations with TJPA. The Lead will be primarily focused on the Procurement workstream identified in Exhibit B, but will also be involved in the GEC/Planning Support workstream identified in Exhibit B.

Caltrain CMGC Core Systems and Track Lead (Start Oct 2023 at 25%, up to 75% from Feb 2024)

The Caltrain CMGC Core Systems and Track Lead represents Caltrain in the cooperative development of the core systems and track package. The CMGC Core Systems and Track Lead will work alongside similar TJPA, GEC, and PMCM leads in contractor engagement, evaluation, and feedback. The CMGC Core Systems and Track Lead will also ensure that the CMGC Core Systems and Track package proceeds in a manner that is consistent with lifecycle Caltrain needs, including access, maintenance, and operations. Given the nature of the Core Systems and Track package as an extension of the Caltrain system, this lead will have significant involvement in the development, delivery, and procurement of this scope. The CMGC Core Systems and Track lead will be primarily focused on the procurement and GEC/Planning Support workstreams identified in Exhibit B.

Caltrain Readiness Lead (Start Dec 2023 at 25%, up to 50% from Feb 2024)

The Caltrain Readiness Lead is responsible for all Systems, Agency, and Public Readiness and Activation activities needed for the project. Based on lessons learned from other major projects, the Readiness Lead will be engaged early to advise and ensure that all project activities from design through procurement and delivery are developed in a manner that supports successful project opening as soon as possible following construction completion. The Readiness lead will be primarily focused to the Procurement and MCA and interim agreements workstreams identified in Exhibit B.

EXHIBIT D

San Francisco Downtown Extension Project (the Portal) Budget (September 1, 2023 – September 30, 2024)

Caltrain costs are divided into three categories:

- *Caltrain Integrated Project Delivery Team (IPDT) costs*, which are estimated on the basis that all members are seconded consultants for activities identified in Exhibit B.
- *Caltrain Headquarters staff costs*, which are in support of the PDT and estimated based on actual salary costs by grade, to which fringe benefits and ICAP are added.
- *Caltrain Professional Services costs*, which are estimated based on activities needed for Caltrain to share development of the Master Cooperative Agreement (MCA) and seek Board approval of the MCA, which are activities in the MCA/Interim Agreement Workstream of Exhibit B.

Assumptions

- Costs include a ramp-up period for IPDT members with the expectation that the bulk of the IPDT work identified in Exhibit B will start in February 2024 as noted by TJPA.
- Professional Services costs include 4th and King DTX Preparation work negotiations
- SamTrans-required ICAP costs (4%) are added to all costs, including consultants.

Exclusions

- 4th and King DTX Preparation scope costs (except as specified in Exhibit B) are excluded and will be provided in a separate agreement.
- IPDT office costs (including rents) are excluded and will be borne by the Project.
- Hours for attending IPMT and ESC are excluded.

NOTE: The below are estimates for planning purposes. As work progresses over the term, the Caltrain Executive Director will inform the TJPA Executive Director via email of (i) increases and decreases of the specified amounts within any category so long as the total specified amounts in the aggregate do not exceed the Budget, and (ii) additional categories (e.g., additional staff positions, additional listed consultants) so long as the total specified amounts in the aggregate do not exceed the Budget. After receipt of the email, the TJPA Executive Director will notify the Caltrain Executive Director within one week if the changes are not approved. If no approval is received, Caltrain will cease work until it obtains approval from the TJPA Executive Director.

Estimated Caltrain IPDT Staff Costs (Role Descriptions provided in Exhibit C)

Title	FY24 Estimates	FY25 Estimates	Total Cost Estimate	FY24 Hours	FY25 Hours	Total hours estimate
Caltrain Project Director	\$336,000	\$149,040	\$485,040	1,120	480	1,600
Level Boarding	\$24,000	--	\$24,000	120	--	120
Caltrain PDB and CMGC Procurement Lead	\$143,000	--	\$143,000	520	--	520
Caltrain CMGC Core Systems and Track Lead	\$209,000	\$102,465	\$311,465	760	360	1,120
Caltrain Readiness Lead	\$120,000	\$62,100	\$182,100	480	240	720
ICAP	\$33,280	\$12,544	\$45,824	--	--	--
Total Caltrain IPDT Estimated Hours				3,000	1,080	4,080
Total Caltrain IPDT Estimated Costs	\$865,280	\$326,149	\$1,191,429			

Estimated Caltrain HQ Staff Costs (Inclusive of ICAP)

Title	FY24	FY25	Estimated hours
Deputy Chief – Planning	400	120	520
Director, Rail Network and Operations	120	36	156
Alternative Vehicle Technology Advisor	64	0	64
Principal Planner, Stations	800	240	1,040
Deputy Chief – Design & Construction	240	72	312
Director, Engineering	400	120	520
Deputy Director, Rail Systems and Engineering	160	48	208
Manager, Rail Network Engineering	160	48	208
Other technical support	1,630	510	2,140
Total Caltrain Staff Estimated Hours	3,974	1,194	5,168
Total Caltrain Staff Estimated Costs	\$627,743	\$195,581	\$823,324

Estimated Professional Services Costs

Name	Title of Scope	FY24	FY25	Total cost
HNTB Team	Strategic advising; planning support	\$1,585,770	\$590,672	\$2,176,442
Kimley Horn (DB Consulting)	Rail operations analysis	\$10,000	\$10,000	\$20,000
Olson Remcho	Legal advising	\$75,000	\$75,000	\$150,000
BG Transportation Group	Security	\$8,667	\$3,467	\$12,134
Hanson Bridgett	Legal advising (real estate)	\$75,000	\$75,000	\$150,000
Mott MacDonald (Simmons Consulting)	Project management	\$260,000	\$104,000	\$364,000
Hatch and Associates	Level boarding analysis	\$5,000		\$5,000
Stadler	Noise and Vibration	\$20,000		\$20,000
Real Estate Valuation	Real Estate Valuation	\$50,000		\$50,000
WSP	Environmental	\$55,910		\$55,910
		\$2,145,347	\$858,139	\$3,003,486

ESTIMATED TOTAL CALTRAIN COSTS

	FY24	FY25	Total cost
Caltrain IPDT Staff	\$865,280	\$326,149	\$1,191,429
Caltrain HQ Staff	\$627,743	\$195,581	\$823,324
Caltrain Professional Services Team	\$2,145,347	\$858,139	\$3,003,486
TOTAL ESTIMATED CALTRAIN INTERIM AGREEMENT COSTS	\$3,638,370	\$1,379,869	\$5,018,239

FY 23-24 Phase 2 (DTX / Portal) Budget	FY 23 -24 Budget Amended
REVENUES Proposition K San Francisco Sales Tax Transit Center CFD Funds TIRCP Parcel F / Other Regional Funds (to be allocated) RM3 (to be allocated) Federal Grants (to be awarded)	6,690,000 12,150,430 30,000,000 6,500,000 75,000,000 6,365,000
TOTAL REVENUES	136,705,430
EXPENSES <i>Salaries, Fringe Benefits & Admin</i> <i>Admin & Professional Services</i> Travel/Conferences (DTX Team) Professional Development (DTX Team) <i>Engineering & Design Services</i> Program Management / Program Controls (current) Program Management / Construction Management (future) Downtown Extension Preliminary Engineering & Design Downtown Extension Interagency Coordination <i>IT support</i> Information Technology Support (PMIS-Kahua) <i>Permits and Fees</i> Other Permits / ROW / Environmental Fees <i>Professional Services</i> Legal Counsel (Meyers-Nave) Other Intergovernmental Agreements / Professional Services <i>Real Estate Services</i> Relocation Services Environmental, Building & Soil / Hazardous Material Services Real Estate Appraisal Services Property Acquisition Archaeological Consultant Services Property Management for new TJPA properties	2,718,930 10,000 1,500 7,100,000 1,500,000 17,000,000 4,590,000 130,000 75,000 810,000 100,000 1,500,000 1,000,000 500,000 99,460,000 160,000 50,000
TOTAL EXPENSES	136,705,430