

**STAFF REPORT FOR CALENDAR ITEM NO.: 13  
FOR THE MEETING OF: November 9, 2023**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorizing the Executive Director to execute an amendment to the DTX Rail Program Enabling Works Planning Memorandum of Agreement between the Transbay Joint Powers Authority (TJPA) and the Peninsula Corridor Joint Powers Board (“Caltrain”), for additional compensation of \$460,000 for a total not to exceed amount of \$1,055,000, and adopting Amendment No. 4 to the FY23-24 Capital Budget for Phase 2 to reallocate \$801,000 to accommodate the contemplated Caltrain services and make other adjustments, but with no change to the total amount of the fiscal year budget or the overall Phase 2 Program Budget.

**EXPLANATION:**

Background

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

As required by Federal Transit Administration’s (FTA’s) Capital Investment Grant (CIG) program, the TJPA and Caltrain are developing a Master Cooperative Agreement (MCA) that outlines each agency’s responsibility to deliver The Portal project, with an expected execution date of fall 2024.

In the interim period before the MCA can be fully negotiated and presented to the agencies’ boards for approval, in February 2023, the TJPA Board authorized the TJPA to enter into the DTX Rail Program Enabling Works Planning Memorandum of Agreement (MOA). The MOA provides a mechanism for TJPA to reimburse Caltrain for consultant resources assisting Caltrain with planning and managing this extremely complex work. The MOA set a not to exceed amount of \$595,000 and a term expiring no later than March 31, 2024.

Separately, the parties entered into an Interim Agreement with Caltrain in August of this year, part of the scope of which covers reimbursement for Caltrain staff time incurred in supporting the 4th and King Railyard planning.

Staff continues to work with Caltrain in development of the MCA and expects to bring the item before the Board in the fall of 2024.

Amendment to the Caltrain MOA

The integrated design team, composed of representatives from TJPA’s General Engineering Consultant, and project management staff from both TJPA and Caltrain have been working closely together to advance design for what has been termed the “4<sup>th</sup> and King Yard Preparation”

or “4KY” portion of The Portal program of contract packages. The integrated design team consults frequently with Caltrain resources in operations, utilities, and other disciplines. Over the last six months, the integrated design team has made significant progress in reaching a common understanding with the operator on an initial scope, schedule, and budget for the 4KY work, including dividing the work into two contract packages and advancing conversations related to delivery method and responsible agency. This work has been complex and required a significant amount of time from the Caltrain oversight consultants.

The existing budget under the MOA is anticipated to be expended in October 2023. TJPA staff recommend increasing the MOA budget by \$460,000, for a total not to exceed amount of \$1,055,000, to allow Caltrain and its consultant to continue their valuable contribution to the integrated design team through the existing end date of the MOU in March 2024, where an overall agreement on the Railyard is anticipated to be executed with Caltrain.

The Caltrain Board has already authorized the proposed amendment.

#### Amendment No. 4 to the FY23-24 Capital Budget for Phase 2

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

In June 2023, the TJPA Board adopted the FY23-24 Capital Budget for Phase 2 in the amount of \$136,705,430. The original budget identified \$3,350,000 for Downtown Extension Interagency Coordination, which assumed \$2,400,000 for coordination with Caltrain and \$950,000 for coordination with the City and County of San Francisco under the Interagency Cooperation Agreement.

On August 10, 2023, the TJPA Board adopted Amendment No.1 to the budget. In August and October, consistent with Board Policy No. 3 (Budget Policy), the Executive Director approved amendments No. 2 and No. 3 to the budget. The current budget identifies \$4,590,000 for Downtown Extension Interagency Coordination, including \$3,640,000 for Caltrain and \$950,000 for the City and County of San Francisco.

Anticipated FY23-24 expenditures for Caltrain’s support exceed the amount included in the current annual Phase 2 Capital Budget by \$801,000, which includes the \$460,000 under the proposed amendment to the MOA (discussed above) and \$341,000 in other anticipated Caltrain costs under the Interim Agreement within FY23-24. 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.

TJPA staff recommends approving Amendment No. 4 to the FY23-24 Capital Budget for Phase 2 by reallocating \$801,000, reducing the Property Acquisition line item and increasing the Interagency Agreements line item by the amounts as shown in the attached. This amendment will

allow services under the amended Caltrain MOA to proceed through March 2024. This amendment reallocates funds between line item expenses in the budget but does not change the total amount of the budget.

Pursuant to the TJPA Board Policy No. 3 (Budget Policy), Board approval is required to augment an existing line-item appropriation by reallocating funding within and among expenditure categories where the aggregate amount reallocated during the fiscal year is greater than 10% of the original appropriation for that category. This Amendment No. 4 does not exceed the policy's 10% threshold, but staff is bringing the budget amendment to the Board for transparency.

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

**RECOMMENDATION:**

Authorize the Executive Director to execute an amendment to the Enabling Works Planning MOA, for additional compensation of \$460,000 for a total not to exceed amount of \$1,055,000 and adopt Amendment No. 4 to the FY23-24 Capital Budget for Phase 2 to reallocate \$801,000 with no change to the total amount of the budget.

**ATTACHMENTS:**

1. Resolution
2. Amendment to Caltrain Memorandum of Agreement
3. Amendment No. 4 to the FY23-24 Capital Budget for Phase 2

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to state law and the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has primary jurisdiction over and will implement all aspects of the Transbay Program, including the portion of the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project commonly referred to as Phase 2/Downtown Rail Extension (DTX); and

WHEREAS, The TJPA is actively engaged in developing the DTX; and

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

WHEREAS, As required by the Federal Transit Administration’s Capital Investment Grants program, TJPA and Caltrain are developing a Master Cooperative Agreement (MCA) that outlines each agency’s responsibility to deliver the entire DTX project, with an expected execution date of fall 2024; 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, operational input, and other coordination with Caltrain to ensure the TJPA meets critical milestones in the Accelerated Work Plan; and

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

WHEREAS, In February 2023, the TJPA Board authorized the Executive Director to execute the DTX Rail Program Enabling Works Planning Memorandum of Agreement (MOA) with Caltrain, authorizing reimbursement from TJPA to Caltrain for the actual cost of Caltrain’s consultant services in an amendment not to exceed \$595,000 and a term expiring no later than March 31, 2024; and

WHEREAS, TJPA staff recommend additional compensation of \$460,000 for Caltrain and its consultant to continue work under the MOA is warranted; and

WHEREAS, In June 2023, the TJPA Board of Directors adopted the FY23-24 Capital Budget for Phase 2 in an amount not to exceed \$136,705,430. In August 2023, the TJPA Board of Directors adopted Amendment No. 1 to the budget. Subsequently, consistent with TJPA Board

Policy No. 3 (Budget Policy), the Executive Director has approved Amendments No. 2 and No. 3 to the budget; and

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

RESOLVED, That the TJPA Board of Directors authorize the Executive Director to execute an amendment to the MOA in the form presented, increasing the compensation by \$460,000 for a total not to exceed amount of \$1,055,000; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors approves Amendment No. 4 to the FY23-24 Capital Budget for Phase 2 in the form presented and without changing the total amount of the budget.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of November 9, 2023.

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Secretary, Transbay Joint Powers Authority



**BOARD OF DIRECTORS 2023**

JEFF GEE, CHAIR  
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MICHELLE BOUCHARD  
EXECUTIVE DIRECTOR

[date]

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

Subject: Amendment #1 to the DTX Rail Program Enabling Works Planning Memorandum of Agreement

Dear Mr. Van de Water:

The purpose of this letter is to confirm the terms for Amendment #1 to the March 3, 2023, DTX Rail Program Enabling Works Planning Memorandum of Agreement ("MOA") by and between the Peninsula Corridor Joint Powers Board ("JPB" or "Caltrain") and the Transbay Joint Powers Authority ("TJPA" and, together with the JPB, the "Parties").

The Parties executed the MOA to ensure information sharing, design, operational input, and other coordination, in furtherance of TJPA's critical milestones in the Accelerated Work Plan, particularly related to Enabling Works Planning for the DTX (also known as The Portal), in the interim period before the MCA can be presented to the agencies' boards for approval. The MOA established a term of no later than March 31, 2024, and a not-to-exceed amount of Five Hundred Ninety-Five Thousand Dollars (\$595,000).

The Parties now wish to increase the not-to-exceed amount described in the MOA by an additional Four Hundred and Sixty Thousand Dollars (\$460,000), for a total not-to-exceed amount of One Million, Fifty-Five Thousand Dollars (\$1,055,000).

The Parties now enter into this Amendment #1, with an effective date of October 1, 2023, to increase the total amount of budget authorized by the Parties and specifically agree to amend the following sections of the MOA in their entirety to read as follows:

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

3. Budget. This Agreement will be for a not-to-exceed amount of One Million, Fifty-Five Thousand Dollars (\$1,055,000). This amount shall be revised, if necessary, by agreement of the Parties, each in their sole discretion. If the budget exceeds the total amount of \$1,055,000 and no such agreement is reached, the Parties will cease work and the Parties will not perform any further work or services beyond those described in Appendix B. The Parties shall adhere to the budget and invoicing procedures set forth in Appendix C. Any changes to the budget and invoicing procedures

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

[date]

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may only be made pursuant to Section 7, Modification, of this Agreement.

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

This Agreement will be for a not-to-exceed amount One Million, Fifty-Five Thousand Dollars (\$1,055,000). This amount shall be revised, if necessary, by agreement of the Parties, each in their sole discretion. If the budget exceeds the total amount of \$1,055,000 and no such an agreement is reached, the Parties will cease work and the Parties will not perform any further work or services beyond those described in Appendix B. The Parties shall adhere to the budget and invoicing procedures set forth in this Appendix C. Any changes to the budget and invoicing procedures may only be made pursuant to Section 7, Modification, of this Agreement). Caltrain consultant costs are estimated based on actual proposal pricing, to which ICAP multiplier (0.0389) is added ("Fully Loaded Budget").

The MOA is amended only to the extent expressly provided herein; all other provisions of the MOA shall remain in full force and effect. The individuals executing this Amendment #1 to the MOA represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. All terms used herein and not otherwise defined shall have the respective meanings given to such terms in the MOA.

In witness whereof the Parties have signed this Amendment #1 to the MOA as of the effective date specified above with the intent to be legally bound.

**PENINSULA CORRIDOR JOINT POWERS BOARD**

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

**Approved as to Form by:**

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

**TRANSBAY JOINT POWERS AUTHORITY**

By: \_\_\_\_\_  
Adam Van de Water  
Executive Director

Transbay Joint Powers Authority  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:  
\_\_\_\_\_  
Secretary, TJPA Board

**Approved as to Form by:**

By: \_\_\_\_\_  
Deborah Miller  
Legal Counsel, TJPA



<b>FY 23-24 Phase 2 (DTX / Portal) Budget</b>	<b>FY 23 -24 Budget Amendment 3 (Admin 10-23- 23)</b>	<b>FY 23 -24 Budget Amendment 4 (Board 11-9-23)</b>	<b>Difference</b>
<b>REVENUES</b>			
Proposition K San Francisco Sales Tax	6,690,000	6,690,000	
Transit Center CFD Funds	12,150,430	12,150,430	
TIRCP	30,000,000	30,000,000	
Parcel F / Other Regional Funds (to be allocated)	6,500,000	6,500,000	
RM3 (to be allocated)	75,000,000	75,000,000	
Federal Grants (to be awarded)	6,365,000	6,365,000	
<b>TOTAL REVENUES</b>	<b>136,705,430</b>	<b>136,705,430</b>	<b>0</b>
<b>EXPENSES</b>			
<b>Salaries, Fringe Benefits &amp; Admin</b>	2,718,930	2,718,930	-
<b>Admin &amp; Professional Services</b>			
Travel/Conferences (DTX Team)	10,000	10,000	-
Professional Development (DTX Team)	1,500	1,500	-
<b>Engineering &amp; Design Services</b>			
Program Management / Program Controls (current)	8,580,000	8,580,000	-
Program Management / Construction Management (future)	1,500,000	1,500,000	-
Downtown Extension Preliminary Engineering & Design	17,000,000	17,000,000	-
Downtown Extension Interagency Coordination	4,590,000	5,391,000	801,000
Economic and Related Analysis	107,000	107,000	-
Other Engineering & Design Services (Safety & Security Mgmt Plan/TVA)	3,020,000	3,020,000	-
<b>IT support</b>			
Information Technology Support (PMIS-Kahua)	130,000	130,000	-
<b>Permits and Fees</b>			
Other Permits / ROW / Environmental Fees	80,000	80,000	-
<b>Professional Services</b>			
Financial and Grants Management	450,000	450,000	-
Legal Counsel (Meyers-Nave)	1,242,000	1,242,000	-
Legislative Services	291,000	291,000	-
Cybersecurity/IT	238,000	238,000	-
Community & Public Relations	225,000	225,000	-
Audits	35,000	35,000	-
Other Intergovernmental Agmts / Prof. Services (3rd Party Agmt Plan, Recruit	1,322,000	1,322,000	-
<b>Real Estate Services</b>			
Relocation Services	1,500,000	1,500,000	-
Environmental, Building & Soil / Hazardous Material Services	1,000,000	1,000,000	-
Real Estate Appraisal Services	500,000	500,000	-
Property Acquisition	91,955,000	91,154,000	(801,000)
Archaeological Consultant Services	160,000	160,000	-
Property Management for new TJPA properties	50,000	50,000	-
<b>TOTAL EXPENSES</b>	<b>136,705,430</b>	<b>136,705,430</b>	<b>0</b>