

**STAFF REPORT FOR CALENDAR ITEM NO.: 17
FOR THE MEETING OF: December 14, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Conceptual approval of Caltrain as the delivery agency for the 4th and King Yard Preparation Package B: At-grade Track and Systems contract (Contract No. 21-4KYB), conditioned on final terms to be presented to the TJPA Board for approval in the planned 4th and King Yard (4KY) Agreement.

EXPLANATION:

Background

Under state law, Public Resources Code section 5027.1, the TJPA has “primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of” the Transbay Program, including the Downtown Rail Extension (DTX), now known as The Portal.

At its September 2022 meeting, the TJPA Board approved Governance Study recommendations for The Portal, as supported by the Executive Steering Committee (ESC) under the terms of the San Francisco Peninsula Rail Program Memorandum of Understanding with the Metropolitan Transportation Commission (MTC), the San Francisco County Transportation Authority (SFCTA), the Peninsula Corridor Joint Powers Board (Caltrain), the California High Speed Rail Authority (CHSRA), and the City and County of San Francisco (Mayor’s Office). The purpose of the Governance Study was to recommend a governance structure for the delivery of The Portal, encompassing the procurement and construction of the project. In the context of the study, “governance” refers to the organizational, oversight, and decision-making framework to direct and manage the project’s scope, schedule, budget, risks, and change. Of particular relevance here, the TJPA Board approved the following Governance Study recommendations:

- Foundational Recommendation #1, confirming the TJPA as the lead agency for procurement and construction of The Portal and confirming that the capacity of TJPA and partner agencies continue to be developed for project delivery; and
- Primary Recommendation #2, confirming the intention to use a collaborative, integrated management approach and core management team, in order to support TJPA, align direction to the multiagency delivery team, and actively manage risks and challenges.

At its July 2022 meeting, the TJPA Board of Directors approved The Portal Project Delivery approach in accordance with the recommendations of a Project Delivery Alternatives Study (PDAS). The PDAS evaluated various traditional and alternative contracting approaches to

deliver The Portal using a risk-based model. The PDAS assumed a single 4th and King Yard Preparation contract, which was the current project team thinking at the time. At its November 2023 meeting, based on further staff and IPMT evaluation, the TJPA Board of Directors approved certain modifications to the Project Delivery approach, including dividing the planned 4th and King Yard Preparation contract into two contract packages using distinct contract delivery types:

- 4th and King Yard Preparation Package A: Site Clearing (Contract No. 20-4KYA), which includes early site clearing of Caltrain assets to allow DTX to begin construction of the tunnel and the underground 4th and Townsend Street Station, using a design-bid-build contract model; and
- 4th and King Yard Preparation Package B: Yard Track and Systems (Contract No. 21-4KYB), which includes track and systems work within the 4th and King railyard and along the mainline to 16th Street to provide for the two-track mainline connection to DTX through a future transitional open cut “U-Wall”, using a construction manager/general contractor (CM/GC) model.

Discussion

As explained above, TJPA is the lead delivery agency for The Portal project, and originally expected to deliver all of the construction packages for the project utilizing an integrated project delivery team approach which includes Caltrain staff.

However, as described in the November 2023 staff report to the TJPA Board, Caltrain and TJPA have been discussing the concept of TJPA delivering contract Package A, and Caltrain delivering contract Package B.

The scope of Package B requires complex sequencing to maintain a high level of safety and continuous rail operations during construction. Caltrain, as the rail operator, is best suited to limit the impacts of construction on its safe and reliable operations. It is Caltrain’s practice to deliver work within its operating right of way to minimize operating disruptions to its passengers. This practice allows Caltrain to coordinate the rail operations and flagger resources and ensure a safe workplace for construction on Caltrain’s active electrified right of way. Lessons learned from other similar projects indicate that difficulties with operator resources is a significant risk in delivering projects on active rail right of way, so making Caltrain the responsible delivery agency mitigates some of this risk. While Caltrain would lead the delivery of Package B, design will continue by TJPA’s general engineering consultant, under Caltrain direction.

Staff recommends the TJPA Board provide conceptual approval of Caltrain as the delivery entity for Package B, conditioned on future approval of a 4th and King Yard (4KY) Agreement and positive review by the Federal Transit Administration. TJPA and Caltrain are actively negotiating the 4KY Agreement. The 4KY Agreement will confirm items such as project definition, roles and responsibilities, indemnification, staffing plan and support budgets, decision-making and stage gates, project budget and schedule, change management approach,

and cost reimbursement, among other items necessary to advance the project. Staff plan to present the 4KY Agreement to the TJPA Board and Caltrain Board for consideration in Spring 2024.

Staff are requesting this conceptual authorization now--prior to the 4KY Agreement--to enable Caltrain to begin the Package B CMGC procurement process in Q1 2024. Caltrain will not let the Package B CMGC contract, however, until after the 4KY Agreement is approved by both TJPA and Caltrain.

Staff have discussed this recommendation with the IPMT and the ESC has been provided a memo summarizing the discussions and recommendation.

RECOMMENDATION:

Staff recommend conceptual approval of Caltrain as the delivery agency for the 4th and King Yard Preparation Package B: At-grade Track and Systems contract (Contract No. 21-4KYB), conditioned on final terms to be presented to the Board for approval in the planned 4KY Agreement.

ATTACHMENTS:

1. Resolution

**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 all matters concerning the financing, design, development, construction, and operation of the Transbay Program, including the portion of the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project, also known as The Portal; and

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

WHEREAS, On September 8, 2022, the TJPA Board of Directors approved the Governance Study recommendations for The Portal, as recommended by the Integrated Program Management Team (IPMT) and Executive Steering Committee (ESC) of the San Francisco Peninsula Rail Program Memorandum of Understanding, including confirming the TJPA as the lead agency for procurement and construction of The Portal and confirming that the capacity of TJPA and of partner agencies continue to be developed for project delivery; and

WHEREAS, On July 14, 2022, the TJPA Board of Directors approved the Project Delivery approach for The Portal, as recommended by the IPMT and ESC and based on the Project Delivery Alternatives Study, including a single 4th and King Yard Preparation contract; and

WHEREAS, On November 9, 2023, the TJPA Board of Directors approved certain modifications to the Project Delivery approach for The Portal, including dividing the planned 4th and King Yard Preparation contract into two contract packages using distinct contract delivery types: (1) Contract No. 20-4KYA: 4th and King Yard Preparation Package A: Site Clearing, using a design-bid-build contract model, and (2) Contract No. 21-4KYB: 4th and King Yard Preparation Package B: Yard Track and Systems, using a construction manager/general contractor (CM/GC) model; and

WHEREAS, TJPA is the lead delivery agency for The Portal project, and originally expected to deliver all of the construction packages for the project utilizing an integrated project delivery team approach which includes Caltrain staff; and

WHEREAS, TJPA and Caltrain staff now conceptually recommend Caltrain as the delivery entity for contract Package B based on operations and safety needs for construction on Caltrain's active electrified right of way and to mitigate some of the risk related to delivering the project on active rail right of way; and

WHEREAS, The conceptual recommendation is subject to future consideration and approval by the TJPA Board of Directors and Caltrain Board of Directors, each in their sole discretion, of a 4th and King Yard (4KY) Agreement, providing the terms and conditions for the arrangement between the parties, and positive review by the Federal Transit Administration; and

WHEREAS, Staff have discussed this recommendation with the IPMT and the ESC has been provided a memo summarizing the discussions and recommendation; now, therefore, be it

RESOLVED, That the TJPA Board of Directors conceptually approves of Caltrain as the delivery agency for the 4th and King Yard Preparation Package B: At-grade Track and Systems contract (Contract No. 21-4KYB), conditioned on final terms to be presented to the Board for approval in the planned 4KY Agreement.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 14, 2023.

Secretary, Transbay Joint Powers Authority