

**STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: December 12, 2024**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to enter into an Amended and Restated Interim Agreement between TJPA and Peninsula Corridor Joint Powers Board (Caltrain), for information sharing, design and operational input, securing funding, and other coordination to ensure the TJPA meets critical milestones in the work plan and documentation requirements of the Federal Transit Administration (FTA) Full Funding Grant Agreement (FFGA) in the amount of \$3,939,106 for Fiscal Year (FY) 2025.

EXPLANATION:

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

In August 2023, Caltrain and TJPA approved an Interim Agreement (IA) to govern TJPA and Caltrain's cooperation in advancing The Portal until the MCA is executed. The IA term was initially scheduled to expire on October 1, 2024. The not-to-exceed contract amount was \$5,019,239. The IA was first amended to extend the term to November 9, 2024, and approve certain consultant resources using the Executive Director's delegated authority and without any increase to the total contract amount. The IA was second amended to extend the term to December 13, 2024, without any increase to the total contract amount.

This action requests the Board's approval to authorize the Executive Director to execute an Amended and Restated Interim Agreement to further extend the term of the agreement while the parties' complete negotiations and adopt a MCA, make certain updates to the agreement, and authorize compensation to Caltrain for its work related to delivery of The Portal in the amount of \$3,939,106 for FY 2025.

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

Concurrently, TJPA and Caltrain remain engaged in developing the MCA targeting completion in 2026 and prior to the TJPA's schedule milestone to begin negotiating the FFGA. The MCA is expected to address key topics, such as funding for project capital costs, design support and coordination, access to Caltrain property interests needed for the project, procurement and construction coordination, operations maintenance and rehabilitation, funding for operating

costs, and asset disposition. Additionally, TJPA and Caltrain have also been negotiating an agreement for the portion of The Portal necessary to be executed within Caltrain's operating right of way, a portion of the work termed "Fourth and King Railyard" or "4KY".

The scope of the Amended and Restated Interim Agreement includes the following items:

- 1) Joint Work Plan: the work jointly undertaken by TJPA and Caltrain to advance the DTX Project during the term of the Agreement.
- 2) Project Delivery Roles: role of the Integrated Project Delivery Team ("IPDT") and joint decision-making process within the IPDT.
- 3) Staffing, Budget, and Reimbursement: a staffing plan, description of resource needs, and a reimbursement mechanism for Caltrain's work in support of advancing The Portal prior to the MCA.
- 4) 4th and King Yard Project ("4KY Project") and Property Access: a reimbursement mechanism and concurrence on delivery approaches related to the 4KY Project, and process for TJPA to access Caltrain property to support necessary design work.
- 5) MCA Negotiation: process for negotiation and execution of other necessary agreements and the MCA.

Joint Workplan

The Joint Workplan outlines the scope of work for both agencies over the term of the Amended and Restated Interim Agreement. It includes the following tasks: 1) review of procurement documents and participation in contractor selection; 2) review and conduct studies to support design, procurement, environmental and grant documents; 3) complete work to support FTA deliverables, governance framework development, and Caltrain and TJPA Board items; and 4) reach interim agreements supporting progress toward a comprehensive MCA, including an agreement regarding the 4KY Project.

Project Delivery Roles

Project delivery staff and consultants from TJPA, Caltrain, and California High Speed Rail will be integrated into an IPDT for design and construction of the DTX Project. The IPDT will operate pursuant to a framework developed by the parties. The IPDT will be the primary staff-level decision-making body with the responsibility and authority to manage the DTX Project so that it can be delivered within the approved scope, budget, and schedule. The IPDT will not supersede the authorities of the TJPA Board or the Peninsula Corridor Joint Powers Board.

Staffing, Budget, and Reimbursement

Under the Amended and Restated Interim Agreement, TJPA and Caltrain will jointly develop an annual work plan and staffing plan, as well as an annual not-to-exceed budget reflecting the estimated costs of Caltrain's work under the plans. The annual not-to-exceed budget for Caltrain's work must be mutually approved by Caltrain and TJPA (through its Chief Financial Officer and the TJPA Project Director). While TJPA staff will approve the annual not-to-exceed budget for Caltrain's work under the Amended and Restated Interim Agreement, the amount must be consistent with the annual capital budget for The Portal, which is approved by the TJPA Board.

For FY 2025, the agreement includes a staffing plan and not-to-exceed budget for Caltrain’s work in the amount of \$3,939,106. TJPA will reimburse Caltrain for actual Caltrain staff and consultant costs as requested in support of The Portal up to this amount and may be scaled back based on the timing of planned or required deliverables. The types of Caltrain costs and amount for FY 2025 are summarized in the following table.

Work Description	FY25 US\$
Portal Program Management IPDT	\$ 485,267
Concept of Operations, Operations and Operations Planning	\$ 250,520
Communications, Government Affairs and Policy	\$ 151,206
MCA and O&M funding	\$ 179,247
4KY	\$ 1,227,416
Portal Procurement Technical Reviews and Support	\$ 691,704
Utility and Third-Party Support	\$ 51,730
Real Estate	\$ 68,310
Project Controls, Invoice, ODCs & Administration	\$ 396,636
Legal	\$ 120,000
Contingency	\$ 174,314
ICAP	\$ 142,757
Total	\$ 3,939,106

4KY Project and Property Access

The 4KY Project includes, in part, track, and related facilities partially within Caltrain’s property interests in the City and County of San Francisco. In advance of a separate agreement regarding the 4KY Project and/or execution of the MCA, Caltrain and TJPA agree that the Amended and Restated Interim Agreement will govern TJPA’s responsibility for covering Caltrain’s costs related to development of a future 4KY Project agreement and Caltrain’s work associated with delivery of the 4KY Project.

The TJPA's Chief Financial Officer has reviewed and approved the budget availability for the execution of this amendment. Upon Board approval, and in accordance with Board Policy No. 003 (Budget Policy), the Chief Financial Officer will administratively amend the FY2024-25 budget to reflect this agreement.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to execute the Amended and Restated Interim Agreement with Caltrain, in the form attached, in the amount of \$3,939,106 for FY 2025.

The Caltrain Board’s Advocacy and Major Projects Committee considered the proposed Amended and Restated IA on November 20, 2024 and the Caltrain Board considered and approved the proposed Amended and Restated IA on December 5, 2024.

ENCLOSURES:

1. Resolution
2. Amended and Restated Interim Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

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

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

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

WHEREAS, As part of the Federal Transit Administration (FTA) Capital Investment Grants (CIG) Program, and before commencing negotiation of a Full Funding Grant Agreement (FFGA), FTA requires that TJPA, as Project Sponsor, complete and secure all critical third-party agreements that are necessary to facilitate the financing, design, permitting, construction, and operation and maintenance of a federally funded capital transit project; and

WHEREAS, In furtherance of FTA's requirement, TJPA and the Peninsula Corridor Joint Powers Board (Caltrain) are developing a Master Cooperative Agreement (MCA), which is expected to address key topics, such as funding for project capital costs, design support and coordination, access to Caltrain property interests needed for the project, procurement and construction coordination, operations maintenance and rehabilitation, funding for operating costs, and asset disposition; and

WHEREAS, In the interim period before the MCA can be fully negotiated and presented to the agencies' Boards for approval, the TJPA requires information sharing, design and operational input, and other coordination with Caltrain to ensure the TJPA meets critical milestones in the accelerated work plan and documentation requirements of the FFGA, all of which are expected to be eligible for reimbursement as local share to the CIG grant; and

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

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

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

WHEREAS, On November 14, 2024, the TJPA Board of Directors authorized Amendment #2 to the IA, further extending the term of the IA through December 13, 2024 without any increase in the total contract amount; and

WHEREAS, TJPA continues to require information sharing, design and operational input, and other coordination with Caltrain for the advancement of The Portal and staff has negotiated an Amended and Restated IA to further extend the term of the agreement while the parties' complete negotiations and adopt a MCA, make certain updates to the agreement, and authorize compensation to Caltrain for its work related to delivery of The Portal in the amount of \$3,939,106 for FY 2025; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to enter into an Amended and Restated Interim Agreement with Caltrain, in the form presented, in the amount of \$3,939,106 for FY 2025.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting on December 12, 2024.

Secretary, Transbay Joint Powers Authority

Amended and Restated Interim Agreement – Caltrain and TJPA

**AMENDED AND RESTATED 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**

EFFECTIVE DECEMBER 14, 2024

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**AMENDED AND RESTATED 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 Amended and Restated 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 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, in part, 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 "4KY Project"). See Exhibit A for a map of the designated area.
- H. The Parties' rights and responsibilities related to 4KY Project will be covered under a separate agreement between the Parties (the "4KY Agreement") or in the MCA; however, TJPA's responsibility for covering costs related to the preparation and execution of the 4KY Agreement and Caltrain's work associated with the delivery of the 4KY Project will be covered in this

Agreement prior to the execution of a separate 4KY Agreement or the MCA between the Parties. The Parties agree that this Agreement will supersede the March 2, 2023 DTX Rail Program Enabling Works Planning Memorandum of Agreement as amended (“Enabling Works MOA”), which expired September 30, 2024.

- I. The Parties agree that Enabling Works may begin for the 4KY Project upon (1) execution of an agreement regarding property rights as discussed in Section III(B)(1) below and (2) TJPA’s submission of materials to the FTA demonstrating the availability of the full local funding required for completion of a Full Funding Grant Agreement. The Parties agree that the 4KY Project will be covered in a separate 4KY Agreement or in the MCA, 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. 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 authority to condition its Acceptance of any design on requirements relating to Caltrain railroad operations, maintenance, system performance, system 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.
- 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 are continuing their cooperative efforts related to planning, construction procurement, project delivery, funding, and other implementation matters pursuant to an integrated project team model and are currently in discussions to execute the Portal Project Implementation Memorandum of Understanding (“Implementation MOU”). This Agreement is separate from and does not modify or replace the Implementation MOU. Future agreements of TJPA and/or Caltrain cannot impair the rights and obligations of the parties to the Implementation MOU as articulated in that MOU without the prior written consent of all parties to that MOU; likewise, future agreements of TJPA and/or Caltrain cannot impair the rights and obligations of the Parties’ to this Agreement without the prior written consent of both Parties.
- 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, including the role of an IPDT, joint decision-making process for decisions leading up to a MCA, a staffing plan, a description of resource needs, a budget for all of Caltrain’s work on the DTX Project including the 4KY 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 laws and regulations. The Parties further acknowledge that the work performed under this Agreement shall comply with their respective obligations pursuant to the terms and conditions of any existing grant agreements. TJPA specifically acknowledges that nothing in this Agreement will relieve TJPA of its obligations pursuant to TJPA's 2010 Grant/Cooperative Agreement with the Federal Railroad Administration related to the grant of \$400 million in American Recovery and Reinvestment Act (ARRA) funds to construct the train box. The Parties also agree that nothing in this Agreement will relieve Caltrain of its obligation not to take any action that Caltrain knows or should have known would effectively preclude or make materially more complicated or expensive CHSRA's future operation in the Peninsula Rail Corridor, pursuant to Caltrain's obligations under section 5.3.1 of the 2018 Program Management Funding Agreement with CHSRA, as amended.
- O. On August 3, 2023, by Resolution No. 2023-52, the Peninsula Corridor Joint Powers Board approved this Agreement, as executed August 17, 2023. On August 10, 2023, by Resolution No. 23-040, the TJPA Board of Directors approved this Agreement, as executed August 17, 2023.
- P. On December 5, 2024, by Resolution No. 2024-_____, the Peninsula Corridor Joint Powers Board approved this Amended and Restated Interim Agreement. On December 12, 2024, by Resolution No. 24-_____, the TJPA Board of Directors approved this Amended and Restated Interim 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. **Acceptance:** Written approval by a designated representative of either Party. For Design Packages, as defined in Section II below, Acceptance shall be indicated by the signature of each Parties' representative on a cover sheet indicating that all comments are resolved and the package is ready to proceed to the next milestone. Acceptance 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 IV(B)(3) 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 Program Director:** The Caltrain Project Executive, who will be Caltrain's most senior member of the IPDT. The Caltrain Program 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.
11. **Change Order:** A written amendment changing the terms or conditions of a contract between one of the Parties and a third party.
12. **CHSRA:** The California High-Speed Rail Authority.
13. **CMGC:** The Construction Manager/General Contractor method of project delivery.
14. **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.
15. **Contractor:** The contractor(s) awarded the Contract by TJPA and/or Caltrain.
16. **CPUC:** The California Public Utilities Commission.

17. **Days:** Calendar days, including Saturdays, Sundays, and legal holidays, unless otherwise specified.
18. **Design Exceptions:** Proposed variances to the Caltrain Design Criteria and Standards, or DTX Design Criteria.
19. **Dispute Resolution:** The dispute resolution and escalation process described in Section II(E) of this Agreement.
20. **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.
21. **DTX Procurement Plan:** A document, or series of documents, that identifies requirements and timeframes for the procurement of Contractors for the DTX Project.
22. **DTX Project:** The Downtown Rail Extension Project as defined in Paragraphs E, F, and G of the Recitals, including the 4KY Project, also known as “The Portal.”
23. **Effective Date:** This term will have the meaning given to it in Section VI(H)(13).
24. **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 IV(C)(1).
25. **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.
26. **Enabling Works MOA:** The March 2, 2023, DTX Rail Program Enabling Works Planning Memorandum of Agreement between TJPA and Caltrain, as amended.
27. **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.
28. **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.
29. **Force Majeure:** Any event described in Section VI(E) of this Agreement which has an adverse or material impact on either Party’s ability to fulfill its obligations under this Agreement.
30. **4KY Agreement:** Future agreement between the Parties regarding the 4KY Project.
31. **4KY Project:** A portion of the DTX Project within Caltrain’s property interests as defined in Recital G.
32. **FRA:** The Federal Railroad Administration.
33. **FTA Deliverables:** Any document or series of documents submitted or intended to be submitted to the FTA related to the DTX Project.
34. **FTA:** The Federal Transit Administration.
35. **GEC:** A General Engineering Contract.
36. **Integrated Management Team (IMT):** Senior management group convened by the TJPA Executive Director and led by the TJPA Project Director, with representation from the partners or from a sub-set of the partners as mutually agreed, with responsibility during

Phase 2 of Blueprint Implementation (as defined in the Implementation MOU) to integrate/coordinate management-level activities across the agencies, remove roadblock and marshal resources, and provide early/ongoing visibility into project status, issues, and risks.

37. **Integrated Program Delivery Team (IPDT):** This term will have the meaning given to it in Section II(A) below.
38. **IPDT Framework:** This term will have the meaning given to it in Section II(A)(1) below.
39. **Joint Work Plan:** This term refers to the set of work the Parties agree to undertake as described in Exhibit B.
40. **Master Cooperative Agreement (MCA):** The contemplated future agreement between the Parties.
41. **MTA:** The San Francisco Municipal Transportation Agency.
42. **MTC:** The San Francisco Bay Area Metropolitan Transportation Commission.
43. **Notice to Proceed (NTP):** Written document to be issued by TJPA to Caltrain giving authorization to begin on a mutually-agreed scope of work and the timeline for the scope of work.
44. **Party and Parties:** TJPA and Caltrain either collectively or individually.
45. **Procurement Documents:** All documents produced or referred to by TJPA or Caltrain to describe or determine elements of Contract procurement or procedures.
46. **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.
47. **Progressive Design Build (PDB):** A project delivery process in which both the design and construction of a project are procured from a single Contractor.
48. **PDB Contractor:** Progressive-Design Build Contractor.
49. **Railyard:** Caltrain yard and station property bounded by 4th and 7th Street and King and Townsend Street.
50. **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.
51. **SFCTA:** The San Francisco County Transportation Authority.
52. **SFOEWD:** The San Francisco Office of Economic & Workforce Development.
53. **SFPUC:** The San Francisco Public Utilities Commission.
54. **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.
55. **Term:** This term will have the meaning given to it in Section I(C) below.
56. **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.

57. **TJPA:** The Transbay Joint Powers Authority.

C. **Term.**

The term of this Agreement (“Term”) will commence upon the Effective Date and continue for three years with two one-year options to be exercised by mutual agreement of the Parties unless (i) the Parties enter into an MCA or other agreement that explicitly supersedes this Agreement; or (ii) the Agreement is earlier terminated pursuant to the terms described in Section VI(F) herein.

D. **Purpose of Agreement.**

The Parties will advance the DTX Project 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 IPDT and the decision-making process during the Term, including the procedure for review and Acceptance of the design for the 4KY Project, (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) process for TJPA access to Caltrain property to support necessary design work during the Term of the Agreement, and (5) 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 or successor adopted Work Plans and documentation requirements, and negotiate and seek Board approval of an MCA prior to TJPA’s submission of an application for a Full Funding Grant Agreement (“FFGA”) to FTA.
2. Retained Jurisdictional 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).

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.
 - d. The Parties will continue their cooperative efforts related to planning, design, construction, funding, and other implementation matters pursuant to an integrated project delivery team model and in accordance with the MOU, and any successor agreement between the MOU parties.
 - e. The DTX Project will be cost neutral to both Caltrain and TJPA operations. Caltrain is responsible for system integration, start up and rail activation of DTX Project. The Parties agree that funding for Operations and Maintenance ("O&M") is a critical issue to be addressed via the MCA, as the MCA is a Critical Third Party Agreement required for FFGA. Staff from both Parties will continue working at the direction of the Parties' Joint Ad Hoc Committee to devise a mutually-agreeable approach to be documented in the MCA.
 - f. The Parties further agree that TJPA shall not commence construction on the portion of the 4KY Project known as "Package A," consisting of clearing a portion of the 4th and King Yard necessary for the DTX Project, prior to entering a binding commitment between the Parties to construct the portion known as "Package B," which is the realignment of track and systems in the 4th and King Yard to allow for maximum operating capacity while the DTX Project is under construction and the connection of the DTX to the Caltrain mainline.

II. DECISION-MAKING PROCESSES

A. **Integrated Program Delivery Team.**

Staff and consultants from Caltrain will be integrated into an Integrated Program Delivery Team (“IPDT”) convened by the TJPA Executive Director and led by the TJPA Project Director consisting of representatives from TJPA, Caltrain, and CHSRA, their consultants and contractors, and other resources/personnel as required, with responsibility to deliver the DTX Project during Phase 1 and Phase 2 of Blueprint Implementation (as those terms are defined in the Implementation MOU). 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. The IPDT shall be organized and operated pursuant to the IPDT Framework. The IPDT Framework is expected to be jointly prepared for mutual approval by TJPA (through its Executive Director), Caltrain, and CHSRA no later than December 31, 2024; the IPDT Framework may be subject to review and refinement by mutual agreement of the parties thereto over time. Caltrain’s staffing plan cost summary to implement the Joint Work Plan and the IPDT Framework is attached here as Exhibit E and incorporated by reference herein.
 - a. Program Directors as Primary Point of Contact. TJPA and Caltrain will each designate a Project/Program Director (collectively referred to as the “Program Directors”) 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 Program 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. No design or construction Change Order that affects railroad operations, railroad maintenance, systems performance, systems safety, and security shall be executed without the concurrence of both Parties’ Program Director, which concurrence shall not be unreasonably withheld. Disagreements regarding Change Orders will be referred to the Dispute Resolution process described below in Section II(E). Nothing in this Agreement precludes TJPA from agreeing to additional Change Order approval requirements, including a requirement that CHSRA also concur with any design or construction Change Order that affects railroad operations, railroad maintenance, systems performance, systems safety, and security prior to execution, so long as not inconsistent with this Agreement.
 - c. Caltrain Approval of System Safety Standards. For avoidance of doubt, this Agreement’s mutual-consent procedures ensure that Caltrain holds Approval authority pursuant to subparagraph (c) where proposed Change Orders impact the safety of the Caltrain Core System.
2. 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 shall participate in the review of Design Packages and Basis of Design documents, as they are completed pertaining to Caltrain railroad operations, railroad maintenance, safety, and security for the DTX Project, including without limitation the 4KY Project (collectively, “Design Packages” and each a “Design Package”). 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. Design Packages shall progress to the next milestone only upon both Parties’ Acceptance, which approval shall be delivered timely and not be unreasonably withheld. Either Party may condition its Acceptance on specific, reasonable requirements relating to the safety of railroad operations, or increases railroad operations, railroad maintenance or capital renewal costs of the Caltrain Core System (“Acceptance Conditions”), which requirements shall be met at the next milestone. Either Party may additionally provide comments on any aspect of the Design Package.
 - iii. For avoidance of doubt, TJPA contract packages 10-UR (Utility Relocation) and 30-BD (Building Demolition) do not pertain to railroad operations, railroad maintenance, safety, and security for the DTX Project and therefore are not Design Packages subject to Caltrain Acceptance under this Agreement.
 - iv. Either Party may object to an Acceptance Condition through the Dispute Resolution process described below in Section II(E).
 - v. TJPA will incorporate all Caltrain comments into revised design documents, except for comments that TJPA determines are contrary to the purposes of the DTX Project or will increase the cost of the project out of proportion to the specific benefits at issue. 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).
 - vi. For avoidance of doubt, the requirement of mutual Acceptance set out above ensures that Caltrain has Approval authority where the design issue impacts the safety of railroad operations, or increases railroad operations, railroad maintenance, or capital renewal costs of the Caltrain Core System. However, such Acceptance and Approval authorities are not exclusive and do not preclude TJPA from granting additional approval or acceptance rights to other parties, so long as not inconsistent with this Agreement.
- b. Additional Caltrain review. TJPA must provide reasonable time for Caltrain review and Acceptances 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.

3. 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; any costs associated with Caltrain work to develop the relevant standard shall be Eligible Costs subject to Section IV below. 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. In the event Caltrain desires to change the design criteria or a design after Acceptance of the 60% design submittal on any contract package, TJPA and Caltrain will follow the joint decision-making process described in Section II(A)(2). If it is determined by this process that the design change shall be made, the parties will work together cooperatively to identify funding to effectuate the change.
 4. Variances. When submitting a Design Package pursuant to Section II(A)(2), TJPA may request that the Caltrain Program Director approve a design that varies from the applicable design criteria, which Acceptance shall not be unreasonably withheld.
 5. 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. TJPA will provide drafts of requests for qualifications, invitations for bids and requests for proposals, and addenda for all construction projects and modifications thereof to the IPDT. Caltrain will formally indicate its Acceptance or provide comments for those construction packages pertaining to railroad operations, railroad maintenance, safety, and security within a period mutually agreed by the Parties on a case-by-case basis.
 - b. Project Delivery Approaches. Caltrain Acceptance rights and responsibilities established under this Agreement will be applied to the project delivery method or methods that TJPA selects for project delivery, including without limitation CMGC or PDB.
 - c. Selection Committees. TJPA shall invite Caltrain to participate as a voting member(s) on selection committees to evaluate proposals and review bids for construction contracts. Caltrain may decline to participate at its discretion.
- B. Governance.**
1. Engagement with the IPMT and EWG. The IPDT, through the TJPA PD will provide regular progress reports to the IPMT and its successor IMT, and interface with the Executive Working Group ("EWG") in accordance with the Implementation MOU.
 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.**

1. The Parties agree to participate in joint partnering sessions, focused on:
 - a. Interests. Defining common interests via the agencies' respective purposes, missions, and goals for the DTX Project.
 - b. Goals. Creating a common set of goals for the DTX Project that reflect the interests of both Parties.
 - c. Communication. Establishing a communication framework for disciplined, timely and productive project discussions over the course of the DTX Project.
2. The Parties agree to equally share the costs of partnering sessions, including without limitation staffing and hosting costs. The Parties will alternate hosting partnership sessions. Caltrain costs associated with partnering sessions shall not be Eligible Costs under Section IV.

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, fleet planning, 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 Program Director from either Party has submitted an invocation to the Program Director of the responding Party.

1. Invocation.

- a. Written Notice. The Program Directors will have the authority to invoke the Dispute Resolution process by providing written notice identifying the subject of the dispute to the Program Director for the responding Party.
- b. Method of Resolution. Although notice of the dispute shall be provided in writing, the Program 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. The Program Directors shall make diligent efforts to resolve the dispute for up to fifteen (15) days from the responding Party’s response.
- c. Escalation and Executive Director Response. If the matter remains unresolved after the fifteen (15) day period, or if one or both Program Directors earlier conclude that they cannot resolve the dispute, the Program Directors shall escalate the matter by notifying one another and their respective Executive Directors and providing their respective Executive Directors with all relevant information. The Executive Director of the responding Party will have forty-eight (48) hours after receipt of notice from the Program Director(s) that staff have been unable to resolve the dispute. The Executive Directors shall then 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.

3. Non-Urgent. If the matter is not designated as “urgent” by the initiating Party, the dispute resolution shall proceed as above, except that the responding Party shall make its initial response within five (5) business days of the initial notice, the Program Directors’ diligent efforts at resolution shall extend to thirty (30) calendar days from the responding Party’s response, and the responding Executive Director’s response upon escalation shall be provided within five (5) business days of the escalation.

If one or both Program Directors 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. 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 any available remedies, including without limitation 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/Construction Management Consultant (“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. **4TH AND KING YARD PROJECT WORK**

A. **The 4KY Project.**

The planned work on the 4KY Project includes the enabling work performed in advance of DTX construction in accordance with the 30% design prepared by TJPA for the 4KY Project and consists of Package A and Package B. The 4KY Project will be overseen by the IPDT and managed at the project level by project managers from each agency. The Parties will agree on governance structures for the 4KY Project in the 4KY Agreement and/or the MCA.

B. **Access to 4th and King Railyard.**

1. 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 and other preconstruction activities.

Caltrain shall work diligently and cooperatively with TJPA in confirming and/or securing any required access rights for construction and operations of the DTX project, which rights shall be memorialized in the 4KY Agreement and/or the MCA.

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.

IV. **RESOURCES, BUDGET, AND REIMBURSEMENT**

A. **General Agreements**

1. Reimbursement for Costs. TJPA will reimburse Caltrain for reasonable and actual Caltrain costs for the DTX Project during the Term of the Agreement as described below. The process for identifying the resource needs and budget will be as described in Section IV(B) below. The process for reimbursement will be as described in Section IV(C) below.
2. Efficiency. The Parties agree to work efficiently, minimize duplication of effort, and support Project budget constraints.
3. Certification of Funds. Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Chief Financial Officer through issuance of a Notice to Proceed (NTP). The amount of the TJPA's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in NTP.

B. **Identification of Resource Needs and Budget**

1. Staffing Plan. TJPA and Caltrain will jointly develop an annual work plan and staffing plan; the annual work plan is expected to implement the Joint Work Plan attached here as Exhibit B and incorporated by reference herein. The annual work plan and staffing plan must be mutually approved by Caltrain and TJPA (through its Chief Financial Officer and the TJPA Project Director). When mutual approval is not possible, the Program Directors will identify issues requiring escalation of decision making as described in Section II(E). Caltrain and TJPA (through its Chief Financial Officer and TJPA Project Director) may mutually approve modifications to the annual work plan and staffing plan. Costs that are not reflected in the mutually approved annual work plan and staffing plan may be disallowed from reimbursement.

The Parties expect to apply the following guidelines in developing the annual work plan and staffing plan but may mutually agree to deviate from these guidelines where appropriate:

- a. Reasonable costs incurred by Caltrain for staff time dedicated to the DTX Project and/or assigned to the IPDT are expected to be reimbursable. In developing the annual work plan and staffing plan, the parties will prioritize work, plan for efficient use of resources, and avoid redundancy. Costs associated with Caltrain's attendance at the ESC, EWG, IPMT, and IMT under the MOU (including associated costs such as travel time), and their successors under the Implementation MOU are not reimbursable under this Agreement;
- b. Reasonable costs incurred from developing technical standards when Caltrain has no existing standards to address work associated with the Project are expected to be reimbursable, provided that Caltrain has obtained prior concurrence from TJPA that such standards are necessary for the Project and the Parties have agreed upon a not-to-exceed value for such costs;

- c. Reasonable costs incurred by Caltrain for consultant support to the DTX Project, including costs incurred in connection with 4KY Project, are expected to be reimbursable; and
 - d. Additional or unanticipated costs associated with unforeseen differing site conditions, are expected to be reimbursable.
2. Other Direct Costs. Other direct costs will be identified in the annual work plan and staffing plan, subject to the mutual approval and, where necessary, escalation process described above. Other direct costs that are not reflected in the mutually approved annual work plan and staffing plan may be disallowed from reimbursement.

The Parties expect reasonable expenses including travel and other direct costs associated with DTX Project work are reimbursable. Caltrain will follow TJPA's travel policy for the reimbursement of travel expenses, which TJPA will make available to Caltrain.

TJPA will provide office space to the IPDT at no cost to Caltrain.

3. Budget. TJPA and Caltrain will jointly develop an annual not-to-exceed budget reflecting the estimated costs of the annual work plan and staffing plan and other direct costs. The annual budget will include the Indirect Cost Allocation ("ICAP") rate on costs at a rate of 3.22 percent (FY24 rate) to be updated on an annual basis. The annual budget must be mutually approved by Caltrain and TJPA (through its Chief Financial Officer and the TJPA Project Director). When mutual approval is not possible, the Program Directors will identify issues requiring escalation of decision making as described in Section II(E). Caltrain and TJPA (through its Chief Financial Officer and TJPA Project Director) may mutually approval modifications to the annual budget. Costs that are not reflected in the annual budget may be disallowed from reimbursement. Notwithstanding the above procedures, the Parties' obligations to incur and reimburse costs require approval of the Parties' respective legislative bodies, each in their sole discretion.

The annual budget for FY24-25 is attached as Exhibit E. The annual budget for subsequent fiscal years will be developed and mutually approved and made effective following the procedures above; no amendment to this Agreement will be required.

4. Notices to Proceed. After TJPA Board approval of the annual capital budget for The Portal and budgeted funds for this Agreement are allocated to TJPA, the TJPA Chief Financial Officer will issue an NTP to authorize work that is within the mutually approved annual work plan and staffing plan and adopted annual budget. Each NTP shall include a defined scope of work, a not-to-exceed maximum price under the NTP, and specify an effective and end date. Costs that are not reflected in an NTP may be disallowed from reimbursement.

C. **Reimbursement**

1. Invoicing. TJPA will reimburse Caltrain for 100 percent of its reasonable and actual costs for the DTX Project during the Term of this Agreement, incurred in conformance with Section IV(B) (the "Eligible Costs"). Caltrain will include the applicable ICAP rate on Eligible Costs.

- a. Rates. TJPA shall compensate Caltrain at actual hourly labor rates. 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. Reserved
- c. Right to Suspend Work. If the allocated funds for the scope of work and deliverables is less than the annual budget amount for that scope and deliverables or Caltrain anticipates that it will be less than such budget amount, and the parties have not reached agreement on an increase to the annual budget, Caltrain may suspend its on-going work under this Agreement, provided that Caltrain's Program Director first notifies TJPA's Project Director by e-mail and TJPA declines to add funds to the annual 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 annual budget. Caltrain may also suspend work if a NTP has expired and no new NTP has been issued.
- d. Invoices. Caltrain will bill TJPA on a cost reimbursable basis. Caltrain will invoice TJPA monthly, providing invoices with auditable documentation for Eligible 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 thirty (30) days after the close of the Fiscal Year specified by TJPA. TJPA will pay invoiced amounts for Eligible Costs within forty-five (45) 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.
- e. Suspension for Nonpayment. Caltrain will suspend its on-going work under this Agreement if past due payments for Eligible Costs are not made within ninety (90) days after Caltrain sent the invoice, provided that Caltrain first follows the notice and confer procedures described in Section II(E).
- f. Billing Disputes. If TJPA in good faith disputes any portion of an invoice, then within thirty (30) 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 applying the escalation of decision making as described in Section II(E). TJPA shall pay the undisputed portion of an invoice as described in this Section. 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.

V. **ADDITIONAL AGREEMENTS**

A. **General Principles and Agreements**

1. Cooperation. The Parties agree to cooperate in negotiating any necessary interim agreements, including any standalone 4KY Agreement, and the MCA.

B. **Master Cooperative Agreement**

1. Timeline. The Parties will cooperate in negotiating an MCA, and will strive to present the agreement to their respective boards no later than six (6) months prior to requesting FFGA.
2. Required MCA Terms. The MCA, as prepared, negotiated, and executed, shall reflect mutual agreement by Caltrain and TJPA as to the terms set forth below. The Parties will determine:
 - a. The disposition of assets and responsibility for operations, maintenance, and capital renewal of the DTX Project. The Parties commit to developing a mutually agreed 20-Year Financial Plan that addresses O&M. This will include a model for fare revenue allocation.
 - b. A plan for funding for operations and maintenance of the DTX Project that will not include any resources that Caltrain currently uses or expects to use for Caltrain Core System O&M or the TJPA uses to operate and maintain the Salesforce Transit Center.
 - c. An approach to accommodating construction and service related to high speed rail, including issues related to the 4th and Townsend and Salesforce Transit Center Platforms.
 - d. The change management process for the construction phase of the DTX Project.
 - e. All temporary and future use of Caltrain's property rights for the DTX Project.

C. **4KY Agreement**

1. Timeline. The Parties will cooperate to determine if the 4KY Project will be addressed in a separate 4KY Agreement or in the MCA.
2. Future 4KY Agreement. The Parties agree that this Interim Agreement and any future 4KY Agreement will apply to governance and reimbursement for the design and planning of the 4KY Project, up until the Parties' Acceptance of the IFC package. The Parties agree that any 4KY Agreement or MCA will address and planning and design work remaining at the time of execution of that future agreement, the development and construction of the 4KY Project, including construction closeout and commissioning, joint delivery including the change management and decision-making at the project level, any TJPA responsibilities related to the relocation or replacement of facilities presently on the 4KY Project site, and the use of Caltrain property for the 4KY Project.

- 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.

VI. **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.

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 VI(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 VI(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. Each Party agrees that it will name or cause to be named the other Party as an additional insured, indemnified Party and/or loss payee (pertaining to Caltrain property) on any policy of insurance purchased by that Party and in any indemnity provisions in all agreements between the Party and design professionals, contractors, or any other party with which the Party 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 thirty-(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 thirty (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 VI(C); and (5) those terms that expressly survive termination.
5. Within sixty (60) days after 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 forty-five (45) days after receipt.
- G. **Budget Authority.** All obligations under this Agreement are subject to and contingent on the obligor agency's budgetary authority to make the expenditures necessary to carry out the obligation.
- H. **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 either Party while the other Party is in default will constitute a waiver of the default. 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 December 14, 2024, 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 effective as of the Effective Date by their duly authorized representatives.

<p>TRANSBAY JOINT POWERS AUTHORITY, a joint exercise of powers authority</p> <p>By: _____ Adam Van de Water Executive Director</p> <p>Transbay Joint Powers Authority Board of Directors Resolution No. _____ Adopted: _____ Attest: _____ _____ Secretary, TJPA Board</p> <p>APPROVED AS TO FORM FOR TJPA:</p> <p>By: _____ Deborah Miller Legal Counsel</p>	<p>Peninsula Corridor Joint Powers Board</p> <p>By: _____ Michelle Bouchard Executive Director</p> <p>Peninsula Corridor Joint Powers Board Board of Directors Resolution No. _____ Adopted: _____ Attest: _____ _____ Secretary, Caltrain Board</p> <p>APPROVED AS TO FORM FOR CALTRAIN:</p> <p>By: _____ James C. Harrison General Counsel to the Peninsula Corridor Joint Powers Board</p>
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List of Exhibits

Exhibit A – Map of DTX Project

Exhibit B – Joint Work Plan (November 1, 2024 – June 30, 2025)

Exhibit C – RESERVED

Exhibit D – RESERVED

Exhibit E – Staffing Plan Cost Summary (November 1, 2024 – June 30, 2025)

Exhibit A Map of DTX Project

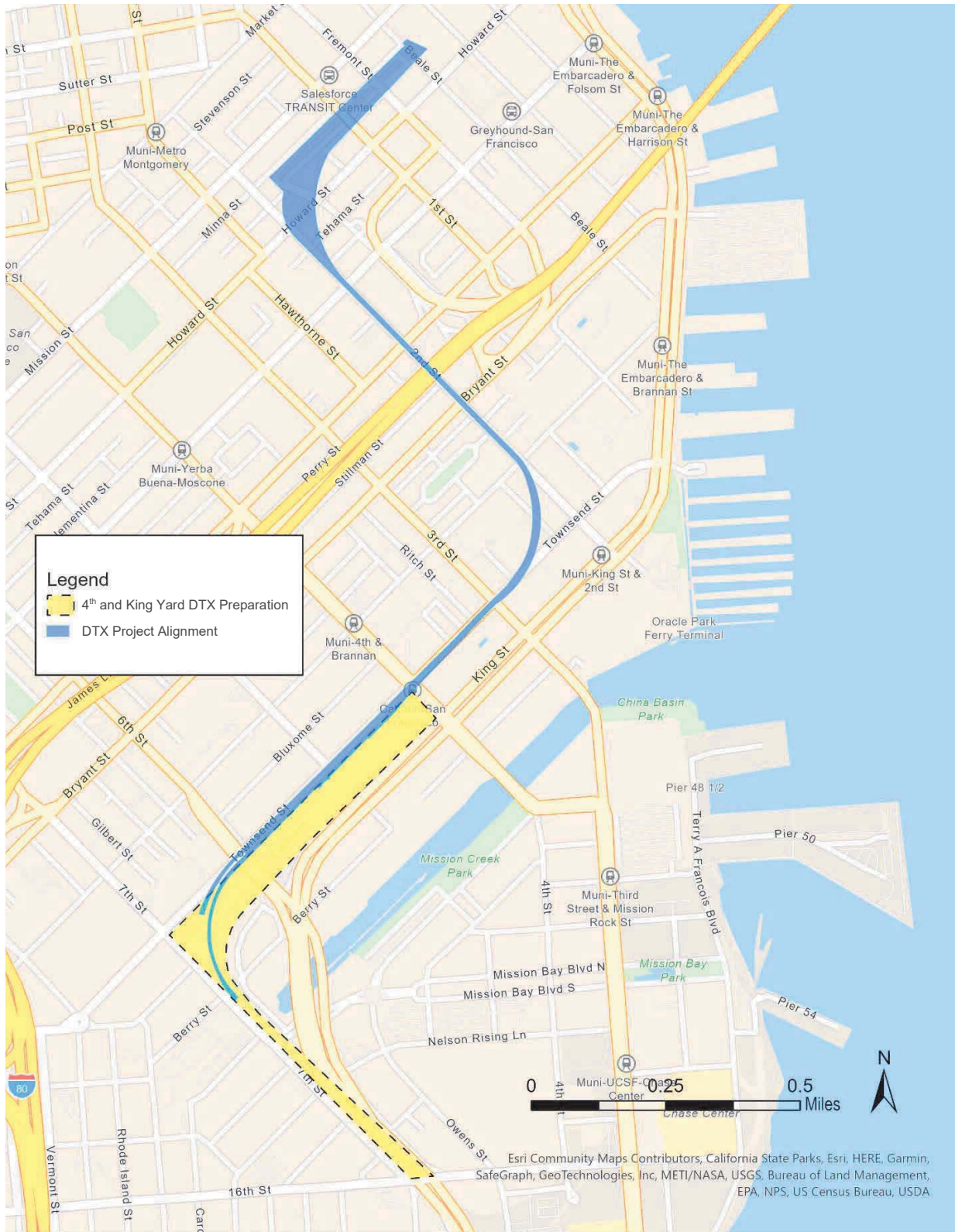


Exhibit B
Joint Workplan to be completed by both Parties
from November 1, 2024 – June 30, 2025
(Includes 4th and King Yard Preparation)

Workstream	Scope of Work
1. Procurement Document Development/Contractor Selection.	<p>Review and provide comments on procurement documents (RFQ&RFP) and support TJPA on contractor selection for:</p> <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 Rail Systems b. Progressive Design Build package <ul style="list-style-type: none"> i. Main Civil and Tunnel c. Track and Systems RFQ
2. GEC/Planning support	<p>Conduct studies to support design, procurement, environmental and grant documents:</p> <ul style="list-style-type: none"> a. Value Engineering/Scope refinement b. Completion of Load Flow Analysis c. Completion of Passenger simulations at Salesforce and 4th/Townsend Stations d. 6th St Sewer relocation and design e. Operations planning f. Review of HSR assets and management prior to HSR operations in DTX g. GBR (Geotech baseline report) h. Ridership and revenue analysis including evaluation of project demand and project capacity (with SFCTA) i. Additional studies to support project activities.
3. Agency and regulatory Coordination	<p>Complete work efforts to support:</p> <ul style="list-style-type: none"> a. FTA/PMOC deliverables b. IPMT c. JPB and TJPA board engagement d. Joint Ad Hoc Committee engagement e. EWG f. Six party MOUs and work plan g. Change Control Board h. Escalation Process
4. MCA or/and 4KY interim agreements development/negotiation	<p>Reach interim agreements supporting progress toward a comprehensive MCA, including:</p> <ul style="list-style-type: none"> a. Temporary and permanent real estate actions within Caltrain right-of-way b. 4th and King Yard Preparation c. Rolling Stock <ul style="list-style-type: none"> i. Level boarding implementation and funding plan

Workstream	Scope of Work
	<ul style="list-style-type: none"> ii. Maintenance of Way vehicles procurement and funding plan d. Rail Activation plan e. Asset disposition f. Operations and maintenance g. Revenue allocation h. O&M Funding Strategy and commitment i. Reach Final MCA agreement
5. 4KY Delivery	<ul style="list-style-type: none"> a. Provide oversight of General Engineering Consultant (GEC) for 4KY design. b. Coordinate 4KY technical requirements with Caltrain maintenance, operations, engineering, and safety/security units. c. Review 60%, 90%, and 100% design documents for 4KY Package A d. Review revised 30% and 60% design documents for 4KY Package B e. Finalize 4KY B procurement method f. Re-assessment of Procurement of 4KY Package B construction contractor
6. Portal Program Management and Delivery	<ul style="list-style-type: none"> a. IPDT framework and delivery team structure b. Support TJPA on FFGA Pre-requisite work tasks c. Review and development of master program schedule and baseline d. PMP Development and review e. Lessons Learned from PCEP delivery f. Risk Management and mitigation g. Joint communication and public outreach strategy and support upon request of TJPA's Communication and Legislative Affairs Director h. Technical and Operational working group with TJPA/CHSR i. Development of Concept of Operations
7. Communications, Public Relations, Government Affairs	<p>Upon request of TJPA's Communication and Legislative Affairs Director:</p> <ul style="list-style-type: none"> a. Support TJPA Communications Team on program champion messages b. Support TJPA on Federal, State and Local delegations for Capital Funding

Note: Attendance of the following meetings are not included in the budget requests:
(IMPT, EWG, Ad Hoc Board Meeting, Joint Ad Hoc Board Meeting, TJPA/JPB Board meetings)

Exhibit E
Staffing Plan Cost Summary
(November 1, 2024 – June 30, 2025)

Work Description	FY25 US\$
Portal Program Management IPDT	485,267
Concept of Operations, Operations and Operations Planning	250,520
Communications, Government Affairs, and Policy	151,206
MCA and O&M Funding	179,247
4KY	1,227,416
Portal Procurement Technical Reviews and Support	691,704
Utility and Third-Party Support	51,730
Real Estate	68,310
Project Controls, Invoice, ODCs & Administration	396,636
Legal	120,000
Contingency	174,314
ICAP	142,757
Total	\$ 3,939,106