

**DTX RAIL PROGRAM
ENABLING WORKS PLANNING
MEMORANDUM OF AGREEMENT**

This Enabling Work Planning Memorandum of Agreement (“Agreement”), dated as of _____, 2023, is between the Transbay Joint Powers Authority, a joint powers authority (“TJPA”) and the Peninsula Corridor Joint Powers Board (“Caltrain”) (collectively, the “Parties”).

RECITALS

- A. The TJPA is a joint exercise of powers authority created by the City and County of San Francisco (“City”), the Alameda-Contra Costa Transit District, Caltrain, the California High Speed Rail Authority (“CHSRA”), and Caltrans (ex officio). The TJPA is responsible for the financing, design, development, construction, and operation of the Transbay Program (the “Program”). In particular, the Program includes (a) the design, development, construction, and operation of the Salesforce Transit Center, including open space on the roof, a bus ramp, a bus storage facility, and the core and shell of an underground train box (Phase 1); (b) the extension of rail tracks from the current Caltrain San Francisco terminus at Fourth and King Streets (the “Downtown Rail Extension” or “DTX”) to a new underground terminus beneath the transit center to accommodate Caltrain and CHSRA (Phase 2); and (3) in coordination with the Office of Community Investment and Infrastructure, the successor agency to the former San Francisco Redevelopment Agency, certain transit infrastructure activities related to implementation of the Redevelopment Plan for the Transbay Redevelopment Project Area.
- B. To build the DTX, the TJPA will be required to acquire the fee, easements, or use rights for property (“ROW”) owned or controlled by private entities and project stakeholders, including the State, the City, and Caltrain. The attached map at Appendix A summarizes the current anticipated ROW requirements for the DTX. (The design of the DTX and associated ROW requirements are subject to refinement. The expected ROW requirements may also require refinement based on further due diligence related to title conditions, surveys, environmental conditions, and other factors.)
- C. Particular to Caltrain ROW and existing Caltrain railroad improvements, delivery of the DTX requires the “reconstruction of the current storage yard” and “the addition of a new underground Caltrain station on the northern portion [of the storage yard] near Townsend and Fourth Streets.” (FEIS/EIR at 2-25).
- D. Caltrain’s ROW at Fourth and King is critical to Caltrain’s operation. It is the location of Caltrain’s current San Francisco terminal and is also the location of Caltrain’s northern rail yard where trains are stored and maintained. Both facilities will continue to be used by Caltrain both during construction and once DTX is completed. Finally, there is also a concurrent planning effort to determine how Prologis, a private company, may potentially redevelop the rail yard site in conjunction with Caltrain.
- E. In June 2020, the TJPA and Caltrain, together with the San Francisco County Transportation

Authority (“SFCTA”), Metropolitan Transportation Commission (“MTC”), CHSRA, and the City entered into a Memorandum of Understanding (“MoU”), describing a new organizational structure that will support the efforts of the TJPA in the development of the DTX to a ready-for-procurement status.

- F. The MoU commits the parties to participation in a process outlined in the MoU, but does not constitute a commitment of financial resources, and the parties acknowledged that they would need to work together to identify the necessary resources to support their respective activities to carry out the DTX work program.
- G. The TJPA, as project sponsor, and Caltrain, as rail operator and partner, have a unique relationship to the DTX and each other, and the TJPA and Caltrain are developing a Master Cooperative Agreement (“MCA”) that outlines each agency’s responsibility to deliver the entire DTX project, with an expected execution date of summer 2023.

As contemplated by the MoU, the TJPA, in cooperation with the parties to the MoU, has developed an Accelerated Comprehensive Work Plan, leading to an August 2023 submittal of a Full Funding Grant Agreement (“FFGA”) request to the Federal Transit Administration. The Accelerated Work Plan identifies certain tasks and activities to achieve the objective to “Perform technical studies and design to re-define and deliver a DTX initial operating phase as soon as possible” (Task 11). TJPA staff has determined that enabling works at the Fourth and King Yard are critical to meeting that objective of early delivery and will consult on this criticality with Caltrain to jointly determine and coordinate an agreed optimal approach for planning, design, and delivery of the enabling works.

- H. In the interim period before the MCA can be presented to the agencies’ boards for approval, the TJPA requires information sharing, design, operational input, and other coordination with Caltrain to ensure the TJPA meets critical milestones in the Accelerated Work Plan.
- I. All efforts for the enabling works must lead to interim and final outcomes that are fully compatible and integrated into the electrified Caltrain system during and after construction.
- J. The TJPA has been coordinating with Caltrain on work relating to advancing design for enabling sitework and infrastructure relocation on Caltrain ROW (“Enabling Works Planning”). Caltrain is committed to supporting the TJPA in the implementation of the Accelerated Work Plan and advancing the Enabling Works Planning. The work will utilize a multi-stage construction program to allow Caltrain to maintain continuous operations. To assist with planning and managing this complex work, Caltrain needs to dedicate certain staff resources and retain a consultant(s) responsible for developing, managing, and administering the DTX work located in Caltrain’s ROW in coordination with the TJPA. Caltrain requires funding to pay for these dedicated resources.
- K. The TJPA has certain limited resources to reimburse Caltrain for certain of its staff and consultant costs in support of the Enabling Works Planning.
- L. The TJPA receives federal, state, and local funding and all reimbursements contemplated in

this Agreement must meet certain federal, state, and local requirements.

- M. To the extent the Parties reach agreements hereunder related to the Enabling Works Planning before the MCA can be completed, such agreements will be binding on the Parties once approved by their respective boards and until superseded by the MCA.

AGREEMENT

ACCORDINGLY, in consideration of the public benefits and other matters described in the foregoing recitals, the obligations contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the TJPA and Caltrain agree as follows:

1. **Agreement Purpose.** The purpose of this Agreement is to outline roles and responsibilities of the TJPA and Caltrain with respect to the administration and funding of the Enabling Works Planning.
2. **Scope.** This Agreement is limited to the Enabling Works Planning set forth in Appendix B.
3. **Budget.** This Agreement will be for a not-to-exceed amount of Five Hundred Ninety Five Thousand Dollars (\$595,000). This amount shall be revised, if necessary, by agreement of the parties, each in their sole discretion. If the budget exceeds the total amount of \$595,000 and no such agreement is reached, the parties will cease work and the parties will not perform any further work or services beyond those described in Appendix B. The parties shall adhere to the budget and invoicing procedures set forth in Appendix C. Any changes to the budget and invoicing procedures may only be made pursuant to Section 7, Modification, of this Agreement.
4. **Term.** The term of this Agreement shall commence on March 2, 2023. The term of this Agreement shall terminate on the earliest of: (a) the execution of the MCA between the Parties; (b) termination by either Party pursuant to Section [10]; or (c) March 31, 2024.
5. **Indemnification; Insurance**
 - A. Caltrain shall indemnify, defend, and hold harmless TJPA, its Board of Directors, representatives, agents or employees from and against all claim, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), arising from acts carried out by Caltrain pursuant to this Agreement, its officers, employees or agents in connection with this Agreement, except those arising by reason of the sole negligence or willful misconduct of TJPA, its officers, employees and agents.
 - B. The TJPA shall indemnify, defend, and hold harmless Caltrain, its Board of Directors, representatives, agents or employees from and against all claim, injury, suits, demands, liability, losses, damages and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), arising from acts carried out by TJPA pursuant to this Agreement, its officers, employees or agents in connection with this

Agreement, except those arising by reason of the sole negligence or willful misconduct of Caltrain, its officers, employees and agents.

- C. 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. Caltrain shall ensure that its consultant(s) retained for the Enabling Works Planning names the TJPA as an additional insured in the same form and manner as Caltrain requires the consultant to provide for Caltrain.

6. **Notices.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

TJPA: Executive Director
Transbay Joint Powers Authority
425 Mission Street, Suite 250
San Francisco, CA 94105
E-mail: avandewater@tjpa.org

Caltrain: Executive Director, cc: General Counsel
Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
E-mail: bouchardm@caltrain.com, with a copy to jharrison@olsonremcho.com

Any notice of default must be sent by registered mail.

7. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
8. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
9. **Audit and Inspection of Records.** The Parties agree to maintain and make available to each other, during regular business hours, accurate books and accounting records relating to their work under this Agreement and the work of any third parties performing work on the Operations Analysis. The Parties will permit each other to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than three years after Caltrain receives final payment from the TJPA. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have

the same rights conferred upon the Parties by this Section.

10. **Termination for Convenience/Cause/or Suspension.** Either Party may for any reason (convenience or cause) terminate or suspend this Agreement, in whole or in part, at any time by written notice to the other Party. Upon termination of this Agreement, Caltrain and its consultant shall cease performing the services described in Appendix B. Caltrain's consultant shall be paid its costs for work performed up to the termination of this Agreement, plus any costs reasonably necessary to effect the termination, if termination is for convenience. If the Agreement is terminated or suspended for cause, Caltrain shall be paid expenses actually incurred by Caltrain in accordance with the terms of the Agreement as of the effective date of termination. Sections [5, 6, and 9] shall survive termination or expiration of this Agreement.
11. **Compliance with Laws.** The parties shall keep themselves fully informed of all federal, state, and local laws in any manner affecting the performance of this Agreement, and must at all times comply with such laws, as they may be amended from time to time.
12. **Relationship of the Parties.** Caltrain shall at all times treat all persons working for or under the direction of Caltrain as agents or employees of Caltrain, and not as agents or employees of the TJPA.
13. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any prior oral or written understanding on the same subject.
14. **Electronic Signature.** Unless otherwise prohibited by law or policy, the Parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term "electronic copy of this Agreement" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed agreement in a portable document format. The term "electronically signed Agreement" means the Agreement that is executed by applying an electronic signature using technology approved by the TJPA and Caltrain.

IN WITNESS WHEREOF, The Parties have executed this AGREEMENT on the date set forth above:

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Adam Van de Water, Executive Director

APPROVED AS TO FORM:

By: _____
TJPA Legal Counsel

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

Secretary, TJPA Board

PENINSULA CORRIDOR JOINT POWERS
BOARD

By: _____
Michelle Bouchard, Executive Director

APPROVED AS TO FORM:

By: _____
PCJPB Legal Counsel

APPENDIX A
Map of Anticipated DTX ROW

Transbay Program DTX ROW

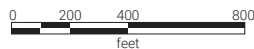
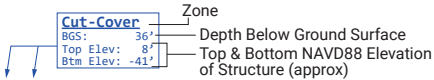
Transit Center (Phase 1)

Public ROW in Natoma, Minna, First, Fremont, and Beale Streets acquired as part of Phase 1

- | | |
|-----------------------------|-------------------|
| TJPA Parcel | CCSF ROW |
| State Parcel | Rock Dowel Encro. |
| Private Parcel | Burton Act Parcel |
| Parcel w/ Rock Dowel Encro. | Caltrain Parcel |

Block Number

Elevation Data



Oct 05, 2022

Sheet 1 of 4

For planning purposes only. All elements subject to change. Measurements provided for information but should not be relied on.

Salesforce
Transit Center

Train Box
Extension

SHEET 2

SHEET 3

SHEET 4

Transbay Program DTX ROW

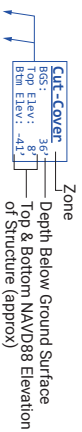
Transit Center (Phase 1)
Public ROW in Natomia, Minna, First, Fremont, and
Beale Streets acquired as part of Phase 1

- TJPA Parcel
- State Parcel
- Private Parcel
- Parcel w/ Rock Dowel Encro.
- CCSF ROW
- Rock Dowel Encro.
- Burton Act Parcel
- Caltrain Parcel

Block Number

Lot Number
Address

Elevation Data



Oct 05, 2022 Sheet 3 of 4

Will Signatur UDTX/Right of Way/DTX ROW Public Private Lands ver06 20221103.ai

For planning purposes only. All elements subject to change. Measurements provided for information but should not be relied on.

Harrison St (82.5')

Emergency Egress & Vent Structure Site

Mined
BGS: 64'
Top Elev: -6'
Btm Elev: -50'

Perry St

Vassar Pl

Stillman St

Bryant St (82.5 ft)

Tunnel

South Park Ave

Mined (Lowest Point)
BGS: 70'
Top Elev: -32'
Btm Elev: -82'

Brannan St (82.5 ft)

Signal

Alcove

Emergency Egress & Vent Structure Site

Mined
BGS: 58'
Top Elev: -30'
Btm Elev: -74'

Third St (82.5 ft)

Second St (82.5 ft)

Townsend St (82.5 ft)

Tunnel

Cut-Cover
BGS: 34'
Top Elev: -12'
Btm Elev: -64'

Mined
BGS: 38'
Top Elev: -16'
Btm Elev: -60'

King St (70.0 ft)

Transbay Program DTX ROW

Transit Center (Phase 1)

Public ROW in Natoma, Minna, First, Fremont, and Beale Streets acquired as part of Phase 1

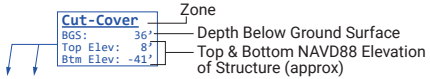
- TJPA Parcel
- State Parcel
- Private Parcel
- Parcel w/ Rock Dowel Encro.
- CCSF ROW
- Rock Dowel Encro.
- Burton Act Parcel
- Caltrain Parcel

Block Number

Lot Number

Address

Elevation Data



Oct 05, 2022

Sheet 4 of 4

For planning purposes only. All elements subject to change. Measurements provided for information but should not be relied on.

Brannan St (82.5 ft)

Fifth St (82.5 ft)

Bluxome St

Fourth & Townsend Station

Townsend St (82.5 ft)

Fourth & King Railyards

King St (70.0 ft)

Berry St

Cut-Cover

BGS: 8'
Top Elev: 0'
Btm Elev: -37'

Station Entrance on Fifth St

Cut-Cover

BGS: 18'
Top Elev: -7'
Btm Elev: -53'

Cut-Cover

BGS: 17'
Top Elev: -4'
Btm Elev: -44'

Portal

Tunnel

Cut-Cover

BGS: 5'
Top Elev: 0'
Btm Elev: -37'

Cut-Cover

BGS: 15'
Top Elev: -7'
Btm Elev: -43'

Station

BGS: 8'
Top Elev: -1'
Btm Elev: -43'

Station

BGS: 8'
Top Elev: 3'
Btm Elev: -53'

Tracks at Grade

APPENDIX B

Enabling Works Planning Scope of Work

Pursuant to Caltrain's competitive procurement process, Caltrain intends to retain consultant(s) from a bench of consultants pre-qualified to provide On-Call Program Management Oversight services related to advancing design for enabling sitework and infrastructure relocation ("Enabling Works Planning") for the Downtown Rail Extension (DTX) project on property Caltrain owns or holds an easement interest ("Caltrain ROW").

The consultant(s) will work under Caltrain staff supervision and on Caltrain's behalf on all matters related to TJPA's Enabling Works Planning for the DTX project on Caltrain ROW. In particular, the consultant(s) will act as a liaison and coordinate with TJPA staff and consultants on Enabling Works Planning, including planning, design, scope, schedule, budget, procurement, project delivery, integration, commissioning, testing, safety, and quality from initiation to closeout. Under Caltrain direction, the consultant(s) will review, identify modifications as necessary and appropriate, ensure Caltrain input is reflected in, approve, and oversee the implementation of TJPA's Enabling Works Planning.

The consultant(s)'s function and objectives are to ensure the TJPA's Enabling Works Planning is consistent with Caltrain standards, protects Caltrain's existing interests (including interests in operations, safety, ROW, and improvements), and does not impair Caltrain's existing rights. The DTX is a critical regional project that will connect Caltrain's regional rail system and the California High-Speed Rail Authority's statewide system to the Salesforce Transit Center in downtown San Francisco. The Enabling Works Planning on Caltrain ROW is critical to the progression of the DTX project; it is on the project's critical path so there is severe time pressure to complete this work. The Parties intend the consultant(s) services and TJPA's reimbursement under this Agreement will facilitate completion of the Enabling Works Planning and delivery of the DTX on the approved accelerated schedule.

APPENDIX C

Budget and Invoicing

This agreement will be for a not-to-exceed amount of Five Hundred Ninety Five Thousand Dollars (\$595,000). This amount shall be revised, if necessary, by agreement of the parties, each in their sole discretion. If the budget exceeds the total amount of \$595,000 and no such an agreement is reached, the parties will cease work and the parties will not perform any further work or services beyond those described in Appendix B. The parties shall adhere to the budget and invoicing procedures set forth in this Appendix C. Any changes to the budget and invoicing procedures may only be made pursuant to Section 7, Modification, of this Agreement). Caltrain consultant costs are estimated based on actual proposal pricing, to which ICAP multiplier (0.0389) is added ("Fully-Loaded Budget").

Rates and Charges: TJPA shall reimburse Caltrain for actual costs incurred for actual consultants providing the Enabling Works Planning, in amounts not to exceed the budget specified above.

Invoices: Caltrain will bill the TJPA on a cost reimbursable basis. Invoices furnished by Caltrain must be in a form reasonably acceptable to the TJPA. Caltrain shall submit invoices monthly to the TJPA. Notwithstanding the foregoing, all invoices for work in a Fiscal Year must be received by the TJPA within the period of time after the close of the Fiscal Year specified by the TJPA. The TJPA shall make a good faith effort to pay all undisputed amounts within forty-five (45) days following receipt of a proper invoice from Caltrain. In no event shall the TJPA be liable for interest or late charges for any payments made after this time period. To the extent the TJPA disputes any invoice, the Parties shall meet and confer in a good faith effort to resolve the dispute.