



BOARD OF DIRECTORS 2024

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AGENDA

PENINSULA CORRIDOR JOINT POWERS BOARD Finance Committee Meeting

March 25, 2024, 2:30 pm

Bacciocco Auditorium, 2nd Floor
1250 San Carlos Ave., San Carlos, CA

Committee Members: Monique Zmuda (Chair), Dev Davis (Vice Chair), Ray Mueller

Members of the public may participate remotely via Zoom at <https://us02web.zoom.us/j/81843266625?pwd=aDExTGltUUJSOUc5TkNnbU1QMTRHUT09> or by entering Webinar ID: # **818 4326 6625**, Passcode: **249080**, in the Zoom app for audio/visual capability or by calling 1-669-900-6833 (enter webinar ID and press # when prompted for participant ID) for audio only. The video live stream will be available after the meeting at <https://www.caltrain.com/video-board-directors>.

Members of the public also may participate in person at: San Mateo County Transit District, 1250 San Carlos Ave., Bacciocco Auditorium - Second Floor, San Carlos, CA, or any other noticed location.

Public comments may be submitted to publiccomment@caltrain.com prior to the meeting's call to order so that they can be sent to the Board as soon as possible, while those received during or after an agenda item is heard will be included into the Board's weekly correspondence and posted online at: <https://www.caltrain.com/about-caltrain/meetings>.

Verbal public comments will also be accepted during the meeting in person and through Zoom* or the teleconference number listed above. Public comments on individual agenda items are limited to one per person PER AGENDA ITEM. Participants using Zoom over the Internet should use the Raise Hand feature to request to speak. For participants calling in, dial *67 if you do not want your telephone number to appear on the live broadcast. Callers may dial *9 to use the Raise Hand feature for public comment. Each commenter will be recognized to speak, and callers should dial *6 to unmute themselves when recognized to speak.

Each public comment is limited to two minutes. The Board Chair has the discretion to manage the Public Comment process in a manner that achieves the purpose of public communication and assures the orderly conduct of the meeting.

March 25, 2024 - Monday

2:30 pm

All items to which Government Code section 84308 applies have been marked with an asterisk.

A double asterisk indicates that one or more Directors of the JPB serve on the governing board of a public agency with which the JPB proposes to contract. Under Government code section 1091(a)(9), this relationship is considered to be a noninterest but it must be disclosed.

1. Call to Order/Pledge of Allegiance
2. Roll Call
3. Public Comment on Items not on the Agenda
Comments by each individual speaker shall be limited to two (2) minutes. Items raised that require a response will be deferred for staff to reply.
4. Consent Calendar
Members of the Board may request that an item under the Consent Calendar be considered separately.
 - 4.a. Meeting Minutes of February 26, 2024 Motion
 - 4.b. Renew Findings of an Emergency Regarding the North Channel Embankment of the San Francisquito Creek Bridge Due to Erosion Pursuant to Public Contract Code §22050* Motion
5. Accept Statement of Revenues and Expenses for the Period Ending February 29, 2024 Motion
6. Authorize Amendment 1 to Contract with Olson Remcho LLP for General Counsel and Other Legal Services Including Execution of Two One-Year Option Terms* Motion
7. Award of Contract for On-Call Management of Soil, Hazardous Waste and Other Environmental Compliance Services* Motion
8. Authorization to Apply to CalPERS for a Successor Agency Contract Motion
9. Committee Member Requests
10. Date/Time of Next Regular Finance Committee Meeting: April 22, 2024 at 2:30 pm. The meeting will be accessible via Zoom and in person at the San Mateo County Transit District, Bacciocco Auditorium, 2nd Floor, 1250 San Carlos Avenue, San Carlos, CA 94070.
11. Adjourn

Information for the Public

All items appearing on the agenda are subject to action by the Board. Staff recommendations are subject to change by the Board. If you have questions on the agenda, please contact the JPB Secretary at 650.508.6242. Agendas are available on the Caltrain website at www.caltrain.com. Communications to the Board of Directors can be e-mailed to board@caltrain.com. *Free translation is available; Para traducción llama al 1.800.660.4287; 如需翻译 请电1.800.660.4287*

Date and Time of Board and Committee Meetings

JPB Board: First Thursday of the month, 9:00 am; JPB Finance Committee: Two Mondays before the Board Meeting, 2:30 pm. The date, time, and location of meetings may be changed as necessary. Meeting schedules for the Board and committees are available on the website.

Location of Meeting

Members of the Public may attend this meeting in person or remotely via Zoom. *Should Zoom not be operational, please check online at <https://www.caltrain.com/about-caltrain/meetings> for any updates or further instruction.

Public Comment*

Members of the public are encouraged to participate remotely or in person. Public comments may be submitted by comment card in person and given to the JPB Secretary. Prior to the meeting's call to order, public comment may be sent to publiccomment@caltrain.com so that they can be sent to the Board as soon as possible, while those received during or after an agenda item is heard will be included into the Board's weekly correspondence and posted online at: <https://www.caltrain.com/about-caltrain/meetings>.

Oral public comments will also be accepted during the meeting in person or through Zoom or the teleconference number listed above. Public comments on individual agenda items are limited to one per person PER AGENDA ITEM. Each commenter will be automatically notified when they are unmuted to speak for two minutes or less. The Board Chair shall have the discretion to manage the Public Comment process in a manner that achieves the purpose of public communication and assures the orderly conduct of the meeting.

Accessible Public Meetings/Translation

Upon request, the JPB will provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in and provide comments at/related to public meetings. Please submit a request, including your name, phone number and/or email address, and a description of the modification, accommodation, auxiliary aid, service or alternative format requested at least 72 hours in advance of the meeting or hearing. Please direct requests for disability-related modification and/or interpreter services to the Title VI Administrator at San Mateo County Transit District, 1250 San Carlos Avenue, San Carlos, CA 94070-1306; or email titlevi@samtrans.com; or request by phone at 650-622-7864 or TTY 650-508-6448.

Availability of Public Records

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that is distributed to a majority of the legislative body, will be available for public inspection at 1250 San Carlos Avenue, San Carlos, CA 94070-1306, at the same time that the public records are distributed or made available to the legislative body.

**Peninsula Corridor Joint Powers Board
Finance Committee
1250 San Carlos Avenue, San Carlos, CA 94070
DRAFT Minutes of February 26, 2024**

Members Present: Ray Mueller, Monique Zmuda (Chair)
Members Absent: Devora “Dev” Davis (Vice Chair)
Staff Present: M. Bouchard, D. Chazan, J. Harrison, Kate Jordan-Steiner, N. Steward-Crooks, A. To, M. Tseng, K. Yin

1. Call to Order/Pledge of Allegiance

Chair Zmuda called the meeting to order at 2:30 pm and led the Pledge of Allegiance.

2. Roll Call

Deputy District Secretary Margaret Tseng called the roll and confirmed a Board quorum was present.

3. Public Comment on Items not on the Agenda

There was none.

4. Consent Calendar

4.a. Meeting Minutes of January 22, 2024

4.b. Renew Findings of an Emergency Regarding the North Channel Embankment of the San Francisquito Creek Bridge Due to Erosion Pursuant to Public Contract Code §22050*

4.c. Award of Contract for Central Control Facility Building Heating, Ventilation, and Air Conditioning (HVAC) Installation Project*

Motion/Second: Mueller/Zmuda

Ayes: Mueller, Zmuda

Absent: Davis

Noes: None

5. Accept Statement of Revenues and Expenses for the Period Ended January 31, 2024

Annie To, Accounting Director, provided the report that included the following:

- Revenue was a total of \$114.8 million compared to \$115 million in the adopted budget, resulting in an unfavorable variance of \$222,000 and primarily due to decrease in other income
- Year-to-date expenses totaled \$119.8 million compared to \$113.6 million adopted budget, resulting in a favorable variance of \$2.8 million and primarily due to decreases in wages and benefits and professional services,
- Year-end projection for fiscal year 2024 is due by April 2024

Staff provided further clarification in response to Chair Zmuda's comments and questions, which included the following:

- Year-end expectations are positive, revenue performing well, expenditures on a downward trend, adhering to the current budget, and add any remaining reserves to the fund balance
- A proposed reserve policy will be brought forth for consideration
- Any funding received from the State Transit and Intercity Rail Capital Grant (TIRC) will be applied to capital reserves
- The quarterly CFO (Chief Financial Officer) report will include the forecast and go to the Board in April
- Uptick in expenses is typically a non-compensation or non-labor expense
- The large amount of savings year to date was due to the inability to hire in the manner anticipated
- Suggested having a separate discussion during the budget process about reserves

Motion/Second: Mueller/Zmuda

Ayes: Mueller, Zmuda

Absent: Davis

Noes: None

6. Adoption of the California Uniform Public Construction Cost Account Act

Kevin Yin, Director of Contracts and Procurement, provided the presentation that included the following:

- Greater need for a higher threshold for electrified service
- Adopting CUPCCAA (California Uniform Public Construction Cost Account Act) has no budget impact

The Committee Members had a discussion and staff provided further clarification in response to the Committee comments and questions, which included the following:

- Formal procurement process for public works services above \$200,000 is required
- Most public agencies have adopted CUPCCAA due to the low \$10,000 threshold
- Implementing will streamline contracting for station improvements that require smaller contracts
- SamTrans adopted CUPCCAA in 2018, but was not previously adopted by Caltrain due to utilizing TASI (TransAmerica Services, Inc.) contract to fulfill smaller projects
- Request to provide a list of other public jurisdictions that participate in the CUPCCAA program prior to the March 7th JPB Board Meeting

Motion/Second: Mueller/Zmuda

Ayes: Mueller, Zmuda

Absent: Davis

Noes: None

7. Authorize Amendment to On-Call Transportation Planning and Consultant Support Services Contract*

Dahlia Chazan, Chief Rail Planning, provided the presentation that included the following:

- The request seeks an additional \$7.5 million in contract capacity to engage six planning On-Call consultants for extra work
- Contract extension from June 30, 2025, to December 31, 2025 and amends (moves up) the dates for two one-year options
- Additional capacity will provide consultant support through the first half of 2025
- New contract will be established before the proposed capacity is utilized
- Planning consultants will continue the work that is funded through the existing capital or operating budget, grants, or partner agreements

Public Comment

Adrian Brandt commented on the advantages of hiring in-house experts over relying on consulting firms.

The Committee Members had a discussion and staff provided further clarification in response to the Committee comments and questions, which included the following:

- The pandemic impacted the contract by diverting consultants to other projects and resulted in unforeseen increases in activities not anticipated during the contract negotiation
- Consultant selections are based on qualification packages that outline abilities and subject matter experts
- Consultant rates are established by incorporating salary rates, permitted profit, and consultant negotiations; and are updated annually
- Performance monitoring of consultants involves consistent communication and mutual feedback between Caltrain and the consulting firm
- Provide project expenditure report categorized by project and consultant for ease of understanding

Motion/Second to move to full Board as regular agenda item with the expenditure report:

Mueller/Zmuda

Ayes: Mueller, Zmuda

Absent: Davis

Noes: None

8. Committee Member Requests – There were none.

9. Date/Time of Next Regular Finance Committee Meeting: March 25, 2024 at 2:30 pm.

10. Adjourn – The meeting adjourned at 3:16 pm

**Peninsula Corridor Joint Powers Board
Staff Report**

To: Finance Committee
Through: Michelle Bouchard, Executive Director
From: Robert Barnard, Chief, Rail Design & Construction
Subject: **Renew Findings of an Emergency Regarding the North Channel Embankment of the San Francisquito Creek Bridge Due to Erosion Pursuant to Public Contract Code §22050**

Finance Committee Recommendation

Technology, Operations, Planning, and Safety Committee Recommendation

Advocacy and Major Projects Committee Recommendation

Purpose and Recommended Action

Staff recommends that the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB):

1. Renew findings previously adopted by the Board pursuant to California Public Contract Code section 22050(c)(2) (Resolution No. 2023-19) on March 29, 2023, and renewed at its subsequent meetings on May 4, 2023 (Resolution 2023-23), June 1, 2023 (Resolution 2023-38), August 3, 2023 (Resolution 2023-46), September 7, 2023 (Resolution 2023-56), October 5, 2023 (Resolution 2023-62), November 2, 2023 (Resolution 2023-68), December 7, 2023 (Resolution 2023-74), January 4, 2024 (Resolution 2024-01), February 1, 2024 (Resolution 2024-13), and March 7, 2024 (Resolution 2024-17) that an emergency exists at the north channel embankment of the San Francisquito Creek Bridge due to erosion and scouring caused by winter storms, and that immediate action is necessary to respond to the emergency; and
2. Continue to authorize emergency repairs of the north channel embankment of the San Francisquito Creek Bridge;
3. Continue to delegate authority to approve all plans and/or designs with regard to the emergency repairs to the Executive Director, or designee; and
4. Continue to authorize the Executive Director, or designee, to take all other actions required to respond to said emergency.

Discussion

Background Regarding Previous Findings Authorizing Emergency Repairs: The JPB owns and maintains the San Francisquito Creek Bridge, which is located in Menlo Park and Palo Alto between Control Points Alma (MP 29.98) and Mayfield (MP 33.50). In early January 2023, after a week of heavy rain, Caltrain Engineering staff inspected the Bridge and discovered that storms had eroded the soil on the creek bank supporting the northern abutment of the Bridge. Further

investigation showed that additional erosion resulting from future storms could undermine the abutment, bridge, and tracks.

The JPB has the authority to undertake emergency repairs pursuant to California Public Contract Code section 22050, which requires that the Board, by a four-fifths vote, make findings based on substantial evidence that the emergency will not permit delay resulting from a competitive solicitation of bids, and that action is necessary to respond to the emergency. Public Contract Code section 1102 defines an emergency as “sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.” The Board made these findings at its March 29, 2023, meeting (Resolution 2023-19) and renewed these findings at its subsequent meetings on May 4, 2023 (Resolution 2023-23), June 1, 2023 (Resolution 2023-38), August 3, 2023 (Resolution 2023-46), September 7, 2023 (Resolution 2023-56), October 5, 2023 (Resolution 2023-62), November 2, 2023 (Resolution 2023-68), December 7, 2023 (Resolution 2023-74), January 4, 2024 (Resolution 2024-01), February 1, 2024 (Resolution 2024-13), and March 7, 2024 (Resolution 2024-17). Section 22050(c) requires the Board to review the emergency action at its next regularly scheduled meeting and at every subsequent regularly scheduled meeting until the action is terminated to determine that there is a need to continue the action.

November 18, 2023, Emergency Declaration: On November 16, 2023, a team of three registered California professional engineers, including a fluvial geomorphologist experienced with the San Francisquito Creek, completed a technical memorandum titled "Overview of Temporary Emergency Stabilization Measures," which stated that, in regard to the creek bank supporting the north abutment of Caltrain’s rail bridge, "the existing bank is likely to erode and would not be stable during/after a large storm event."

On November 18, 2023, the Executive Director issued an emergency declaration, which concluded:

- a. The situation at that time necessitated immediate action because anticipated winter storms threatened the integrity of the bridge, creating the potential for a catastrophic failure of the bridge and the subsequent risks to public safety, infrastructure, and the environment; and
- b. The dry condition of the creek bed created a narrow window during which the JPB could implement emergency stabilization repairs to ensure the integrity of the bridge without risking the safety of workers or endangering aquatic life; and
- c. Given a prediction of severe winter storms and a risk of flash flooding and high creek flows at the San Francisquito Creek, attempting any work during the rainy season would have presented a substantial risk to the safety of workers, threatened endangered species, and increased the risk of a failed stabilization effort and a catastrophic failure of the bridge; and
- d. The situation at that time required that Caltrain take action within a time period less than the normal time needed to process regulatory applications under standard procedures.

Based on these findings, the Executive Director declared an emergency situation for the San Francisquito Creek Bridge and directed that all necessary and appropriate actions be taken to address the emergency, including the mobilization of resources and implementation of temporary creek bank stabilization measures.

The temporary stabilization measures have ameliorated the risk of the immediate collapse of the embankment. However, a continued risk to the Bridge exists, especially in light of long-term predictions of a “strong” El Nino winter for 2023-2024. Accordingly, the emergency will persist until permanent repairs can be completed in the Summer of 2024. Under state law, the Board must continue to review the situation at each meeting and renew findings until the emergency is resolved via the implementation of permanent stabilization measures during the dry-creek season in 2024.

Actions Taken

To date, JPB staff has:

1. Increased frequency of visual inspections of the Bridge and conducted immediate inspections during and/or after storms.
2. Retained on-call bench consultants (WSP, AECOM, Jacobs, and TRC), to assist the JPB in obtaining the required environmental permits, designing the bank stabilization, estimating the cost of the proposed work, and providing construction management services, respectively.
3. Engaged the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, and the California Department of Fish and Wildlife and submitted all necessary applications for regulatory permits and approvals.
4. Met regularly with the City of Menlo Park, the City of Palo Alto, the San Francisquito Creek Joint Powers Authority, and Stanford University to coordinate the scope of the project and jointly review iterative design updates.
5. Jointly developed 15%, 35%, 65%, and 100% designs for the bank stabilization with input from the City of Menlo Park, City of Palo Alto, and regulatory agencies.
6. Jointly prepared and executed a trilateral project agreement by and between the JPB, the City of Menlo Park, and the City of Palo Alto to memorialize cost sharing arrangements and other responsibilities.
7. Obtained iterative and independent cost estimates from consultants and Walsh Construction to establish clear cost expectations and determine a fair and reasonable not-to-exceed construction budget.
8. Awarded a construction contract to Walsh Construction to implement the bank stabilization because Walsh has a crew onsite that specializes in emergency work and because of Walsh’s experience on JPB in-water construction projects, such as the Guadalupe River Bridge Replacement Project.
9. Obtained timely construction permits from the City of Menlo Park, City of Palo Alto, Regional Water Quality Control Board, and California Department of Fish and Wildlife.

10. In accordance with the Executive Director's November 18, 2023, emergency declaration, notified regulatory agencies of the temporary bank stabilization plan and JPB staff's intent to seek any relevant permits.
11. Obtained a second encroachment permit from the City of Menlo Park for the implementation of the temporary stabilization measures.
12. With Walsh Construction, implemented the emergency temporary bank stabilization measures to protect the San Francisquito Creek Bridge from 2023-2024 winter storms which could have otherwise threatened the integrity of the bridge.
13. Updated the project cost estimate to \$8,988,347 to account for the cost of the temporary bank stabilization, additional permitting efforts, and extended schedule for the permanent stabilization work.

Current Status

As of the date of this staff report:

1. An executed trilateral project agreement is in place between the JPB, the City of Menlo Park, and the City of Palo Alto.
2. JPB has 100% final construction drawings and specifications for the permanent bank stabilization design, which has been reviewed by all relevant stakeholders.
3. JPB has a construction contractor, Walsh Construction, under contract to implement the bank stabilization. The contract is based on a time-and-materials approach to compensation and therefore allows flexibility to adapt to changes in scope and schedule.
4. JPB staff has obtained the following permits:
 - a. California Department of Fish and Wildlife Streambed Alteration Agreement
 - b. Regional Water Quality Control Board Section 401 Water Quality Certification Permit
 - c. City of Palo Alto Encroachment Permit for the permanent stabilization project
 - d. City of Menlo Park Encroachment Permit for the permanent stabilization project
 - e. City of Palo Alto Noise Exception Permit for the permanent stabilization project
 - f. City of Menlo Park Heritage Tree Permit
 - g. City of Menlo Park Encroachment Permit for the temporary stabilization measures

JPB staff submitted a timely application for a Section 404 permit to the U.S. Army Corps of Engineers. As part of their ongoing review, the U.S. Army Corps of Engineers has determined it is necessary to seek the review of relevant historic preservation issues and approval from the State Historic Preservation Officer prior to issuing the permit. Due to the time needed for this process to be completed, JPB staff did not receive the essential Section 404 permit in time to construct the project before the end of the dry season on October 15, 2023.

5. Temporary stabilization measures are in place to protect Caltrain's San Francisquito Creek Bridge from 2023-2024 winter storms.

Ongoing and Future Activities

In the months ahead:

1. JPB staff will continue to coordinate closely with the U.S. Army Corps of Engineers to facilitate the issuance of the Section 404 permit for construction of the permanent bank stabilization during the 2024 dry season.
2. JPB staff will continue to monitor conditions around the foundations of the Caltrain rail bridge.
3. JPB staff have updated the project cost estimate and schedule and will update the project funding plan and contracts to align with recent implementation of temporary stabilization measures and the planned implementation of permanent stabilization measures in mid-2024.
4. During the 2024 dry season, JPB staff and Walsh Construction will remove the temporary bank stabilization measures and replace them with the permanent bank stabilization measures designed under the joint project between JPB, the City of Menlo Park, and the City of Palo Alto.
5. JPB staff will report regularly to the Board regarding the status of the project.

Budget Impact

The San Francisquito Creek Emergency Bank Stabilization Project has an approved budget of \$8,988,347 funded in part by Capital Contingency Funds, the San Mateo County Transportation Authority (SMCTA), the Cities of Palo Alto and Menlo Park, and project savings from recently completed projects. A funding source for \$2,520,222 of the \$8,988,347 has yet to be identified and may be included in a forthcoming FY25 budget amendment.

Prepared By:	Robert Barnard	Chief, Rail Design & Construction	650.508.7783
	Mike Boomsma	Project Manager	808.208.2355

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Resolution No. 2024-

**Board of Directors, Peninsula Corridor Joint Powers Board
State of California**

* * *

**Renewing Findings of an Emergency Regarding the North Channel
Embankment of the San Francisquito Creek Bridge Due to Erosion Pursuant to
Public Contract Code §22050**

Whereas, the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB) previously authorized repair pursuant to California Public Contract Code section 22050 by a four-fifths vote of the Board on March 29, 2023 (Resolution 2023-19), making findings that: there was an emergency to repair the north channel embankment of the San Francisquito Creek Bridge due to erosion that threatened the integrity of the structure supporting the JPB's tracks; that the emergency did not permit a delay that would have resulted from a formal solicitation for bids; and that action is necessary to respond to the emergency; and

Whereas, Resolution 2023-19 also authorized emergency repairs of the north channel embankment of the San Francisquito Creek Bridge without adopting plans and specifications or giving notice to potential bidders; and

Whereas, California Public Contract Code Section 1102 defines an emergency as a "sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services"; and

Whereas, California Public Contract Code section 22050 authorizes the JPB to repair and take other immediate actions required to address an emergency, and requires that findings based on substantial evidence must be made that the emergency will not permit delay resulting from a

competitive solicitation of bids, and that the action is necessary to respond to the emergency, by a four-fifths vote of the Board; and

Whereas, Resolution 2023-19 delegated to the Executive Director, or designee the authority: to approve all plans and/or designs; to execute a contract with Walsh Construction II, LLC, to undertake emergency repairs of the north channel embankment at the San Francisquito Creek Bridge at a price that staff has determined is fair and reasonable; and to take all other actions required to respond to said emergency, provided that the Executive Director reports such actions to the Board at each monthly Board meeting until the emergency situation is resolved, with a final report to be made at the first Board meeting after the emergency is resolved; and

Whereas, pursuant to Public Contract Code section 22050(c), the Board must review the emergency action at its next regularly scheduled meeting and affirm by the passage of a four-fifths vote at every subsequent regularly scheduled meeting until the action is terminated to determine that there is a need to continue the action; and

Whereas, the Board most recently renewed its findings via Resolution 2024-17 at its March 7, 2024, Board meeting; and

Whereas, following months of heavy rain in January 2023, assessments of the condition of the north embankment supporting the San Francisquito Creek Bridge Main Track 1 (MT-1) and Main Track (MT-2) by the Peninsula Corridor Joint Powers Board (JPB) revealed significant erosion on the slope of the embankment, threatening the integrity of the north approaching track structure; and

Whereas, the JPB consulted with the U.S. Army Corps of Engineers (USACE), the Regional Water Quality Control Board, and the California Department of Fish and Wildlife concerning

environmental permits for restoration activities to preserve the integrity of MT-1 and MT-2 tracks in light of the significant erosion of the northern embankment; and

Whereas, on November 16, 2023, a team of three registered California professional engineers, including a fluvial geomorphologist experienced with the San Francisquito Creek, completed a technical memorandum, which stated that, in regard to the creek bank supporting the north abutment of Caltrain's rail bridge, "the existing bank is likely to erode and would not be stable during/after a large storm event;"

Whereas, on November 18, 2023, the Executive Director issued an emergency declaration, which concluded:

- a. The situation at that time necessitated immediate action because anticipated winter storms threatened the integrity of the bridge, creating the potential for a catastrophic failure of the bridge and the subsequent risks to public safety, infrastructure, and the environment; and
- b. The dry condition of the creek bed created a narrow window during which the JPB could implement emergency stabilization repairs to ensure the integrity of the bridge without risking the safety of workers or endangering aquatic life; and
- c. Given a prediction of severe winter storms and a risk of flash flooding and high creek flows at the San Francisquito Creek, attempting any work during the rainy season would have presented a substantial risk to the safety of workers, threatened endangered species, and increased the risk of a failed stabilization effort and a catastrophic failure of the bridge; and

- d. The situation at that time required that Caltrain take action within a time period less than the normal time needed to process regulatory applications under standard procedures.

Based on these findings, the Executive Director declared an emergency situation for the San Francisquito Creek Bridge and directed that all necessary and appropriate actions be taken to address the emergency, including the mobilization of resources and implementation of temporary creek bank stabilization measures; and

Whereas, the temporary stabilization measures have ameliorated the risk of immediate collapse of the embankment, but these measures were designed to address the immediate risk of collapse. However, a continued risk to the San Francisquito Creek Bridge exists, especially in light of long-term predictions of a “strong” El Nino 2023-2024 winter. Accordingly, the emergency will persist until the implementation of permanent stabilization measures is completed during the dry-creek season in 2024; and

Whereas, there is a continued and ongoing emergency to repair the north channel embankment of the San Francisquito Creek Bridge due to erosion that threatens the integrity of the structure supporting the JPB’s tracks, and because meteorologists predict a wet winter including storms that could result in additional erosion; and

Whereas, action is necessary to respond to this continued and ongoing emergency to prevent or mitigate loss or damage to life, health, property, or essential public services; and

Whereas, the time required to obtain competitive bids would have unduly delayed the JPB’s ability to make emergency repairs to these essential facilities, and substantial evidence supports the conclusions that the need for emergency actions cannot be delayed, and that the JPB has and must continue to act as expeditiously as possible to repair necessary facilities; and

Whereas, JPB staff have awarded a contract to Walsh Construction, which is also working on the Guadalupe River Bridge project, to undertake emergency repair work; and

Whereas, iterative comparison of independent cost estimates from consultants and Walsh Construction has provided clear cost expectations to assure fair and reasonable pricing.

Now, Therefore, Be It Resolved that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby:

1. Renews findings from March 7, 2024, that an emergency, as defined by Section 1102 of the California Public Contract Code, exists at the north channel embankment at the San Francisquito Creek Bridge due to erosion that threatens the integrity of the structure supporting the JPB's tracks; and
2. Renews findings, based on the substantial evidence presented by staff, that the emergency did not permit a delay that would have resulted from a formal solicitation for bids because the time required to obtain competitive bids would have unduly delayed the JPB's ability to make emergency repairs to these essential facilities, that action is necessary to respond to the ongoing emergency to prevent or mitigate loss or damage to life, health, property or essential public services, that the need for emergency actions cannot be delayed, and that the JPB has and must continue to act as expeditiously as possible to repair necessary facilities; and
3. Continues to authorize emergency repairs of the north channel embankment at the San Francisquito Creek Bridge without adopting plans and specifications or giving notice to potential bidders; and
4. Continues to delegate to the Executive Director, or designee, the authority: to approve all plans and/or designs; to amend the contract with Walsh Construction, to undertake

emergency repairs of the north channel embankment at the San Francisquito Creek Bridge at a price that staff has determined is fair and reasonable; and to take all other actions required to respond to said emergency, provided that the Executive Director reports such actions to the Board at each monthly Board meeting until the emergency situation is resolved, with a final report to be made at the first Board meeting after the emergency is resolved.

Be It Further Resolved that the Board of Directors has reviewed the emergency action taken on March 29, 2023, on May 4, 2023, on June 1, 2023, on August 3, 2023, on September 7, 2023, on October 5, 2023, on November 2, 2023, on December 7, 2023, on January 4, 2024, on February 1, 2024, and on March 7, 2024, to remediate emergency conditions at the embankment of the San Francisquito Bridge, and will continue to conduct such a review at every subsequent regularly scheduled meeting until the action is terminated to determine that there is a need to continue the action by a four-fifths vote pursuant to Public Contract Code section 22050(c).

Regularly passed and adopted this 4th day of April, 2024, by the following vote:

Ayes:

Noes:

Absent:

Chair, Peninsula Corridor Joint Powers Board

Attest:

JPB Secretary
(00505091)

**Peninsula Corridor Joint Powers Board
Staff Report**

To: Finance Committee
Through: Michelle Bouchard, Executive Director
From: Kate Jordan Steiner, Chief Financial Officer
Subject: **Accept Statement of Revenues and Expenses for the Period Ending February 29, 2024**

Finance Committee Recommendation Technology, Operations, Planning, and Safety Committee Recommendation Advocacy and Major Projects Committee Recommendation

Purpose and Recommended Action

Staff proposes that the Finance Committee of the Peninsula Corridor Joint Powers Board (JPB) accepts and enters into the record the Statement of Revenues and Expenses for the Period Ending February 29, 2024.

This staff report provides a brief discussion of significant items and trends in the attached Statement of Revenues and Expenses through February 29, 2024. The statement has been designed to follow the Agency-wide line-item rollup as included in the approved budget. The columns have been designed to provide an easy comparison of year-to-date actuals to the budget including dollar and percentage variances.

Discussion

Annual Forecast: Staff are developing the annual forecast and will provide an update once it is available. Three line items, though not reflected in the following detailed tables, are expected to be materially different from budget by year end:

- 1) Go Pass (page 1, line 2) revenue is projected to be \$1.8M below budget as clients leaving the program.
- 2) Claims, Payments, and Reserves (page 2, line 28) expense is projected to be \$1.9M above budget due to large losses and more claims.
- 3) Wages and Benefits (page 2, line 36) expense is projected to be \$3.5M below budget due to vacant positions.

Year-to-Date Revenues: As of February year-to-date actual, the Grand Total Revenue (page 1, line 17) is \$0.4 million lower than the adopted budget. This is primarily driven by the decrease in Other Income (page 1, line 5) and Go Pass revenue (page 1, line 2) which is partially offset by the higher-than-expected Rental Income (page 1, line 4) and Measure RR revenue (page 1, line 11).

Year-to-Date Expenses: As of February year-to-date actual, the Grand Total Expense (page 2, line 51) is \$4.2 million lower than the adopted budget. This is primarily driven by the decreases in Wages and Benefits (page 2, line 36), Other Office Expense (page 2, line 41), Professional Services

(page 2, line 39), Rail Operator Service (page 2, line 22), Facilities and Equipment Maintenance (page 2, line 29), and Maintenance & Services-Building & Other (page 2, line 31) which is partially offset by the increase in Claims, Payments, and Reserves (page 2, line 28) and Insurance cost (page 2, line 27).

Budget Impact

There is no budget impact for February 2024.

Prepared By:	Li Saunders	Accountant II	650.622.7848
	Danny Susantin	Financial Reporting, Manager	650.622.8073

PENINSULA CORRIDOR JOINT POWERS BOARD					
STATEMENT OF REVENUE AND EXPENSE					
Fiscal Year 2024					
February 2024					
% OF YEAR ELAPSED 66.7%					
	JULY TO FEBRUARY				ANNUAL
	CURRENT ACTUAL	ADOPTED BUDGET	\$ VARIANCE	% VARIANCE	APPROVED BUDGET
REVENUE					
OPERATIONS:					
1 Caltrain Fares	19,291,297	19,343,076	(51,779)	(0.3%)	29,936,000
2 Go Pass	10,744,208	11,176,000	(431,792)	(3.9%)	16,764,000
3 Parking Revenue	1,194,570	1,270,008	(75,438)	(5.9%)	1,905,015
4 Rental Income	1,330,945	684,328	646,617	94.5%	1,026,489
5 Other Income	3,299,332	4,360,840	(1,061,508)	(24.3%)	6,541,260
6					
7 TOTAL OPERATING REVENUE	35,860,352	36,834,252	(973,900)	(2.6%)	56,172,764
8					
CONTRIBUTIONS:					
10 Operating Grants	8,676,877	8,533,960	142,917	1.7%	12,800,936
11 Measure RR	78,567,546	78,097,000	470,546	0.6%	118,400,000
12 Member Agency (VTA - Gilroy)	313,333	313,336	(3)	(0.0%)	470,000
13 LCTOP/SRA	4,605,802	4,605,664	138	0.0%	6,908,503
14					
15 TOTAL CONTRIBUTED REVENUE	92,163,558	91,549,960	613,598	0.7%	138,579,439
16					
17 GRAND TOTAL REVENUE	128,023,910	128,384,212	(360,302)	(0.3%)	194,752,203
18					

PENINSULA CORRIDOR JOINT POWERS BOARD							
STATEMENT OF REVENUE AND EXPENSE							
Fiscal Year 2024							
February 2024							
% OF YEAR ELAPSED 66.7%							
	JULY TO FEBRUARY				ANNUAL		
	CURRENT ACTUAL	ADOPTED BUDGET	\$ VARIANCE	% VARIANCE	APPROVED BUDGET		
19	EXPENSE					19	
20						20	
21	DIRECT EXPENSE:					21	
22	Rail Operator Service	69,039,279	69,782,882	(743,603)	(1.1%)	104,889,704	22
23	Security Services	5,402,795	5,524,589	(121,793)	(2.2%)	8,287,745	23
24	Shuttle Services	45,215	53,336	(8,121)	(15.2%)	80,000	24
25	Fuel and Lubricants*	10,264,778	10,140,872	123,906	1.2%	15,211,316	25
26	Timetables and Tickets	8,103	63,328	(55,225)	(87.2%)	95,000	26
27	Insurance	7,313,588	6,819,800	493,788	7.2%	10,229,703	27
28	Claims, Payments, and Reserves	3,349,336	880,000	2,469,336	280.6%	1,320,000	28
29	Facilities and Equipment Maintenance	4,761,711	5,430,376	(668,665)	(12.3%)	8,171,766	29
30	Utilities	1,808,861	1,805,936	2,925	0.2%	2,708,900	30
31	Maint & Services-Bldg & Other	524,837	1,189,736	(664,899)	(55.9%)	1,784,600	31
32						32	
33	TOTAL DIRECT EXPENSE	102,518,503	101,690,855	827,649	0.8%	152,778,734	33
34						34	
35	ADMINISTRATIVE EXPENSE					35	
36	Wages and Benefits	9,801,985	12,353,093	(2,551,108)	(20.7%)	17,877,158	36
37	Managing Agency Admin OH Cost	2,177,314	2,376,976	(199,662)	(8.4%)	3,565,453	37
38	Board of Directors	11,287	41,912	(30,625)	(73.1%)	62,875	38
39	Professional Services	5,740,900	6,644,108	(903,208)	(13.6%)	9,992,514	39
40	Communications and Marketing	242,783	295,152	(52,369)	(17.7%)	442,730	40
41	Other Office Expenses and Services	1,962,821	2,869,842	(907,021)	(31.6%)	4,307,066	41
42						42	
43	TOTAL ADMINISTRATIVE EXPENSE	19,937,088	24,581,083	(4,643,995)	(18.9%)	36,247,796	43
44						44	
45	TOTAL OPERATING EXPENSE	122,455,592	126,271,938	(3,816,346)	(3.0%)	189,026,530	45
46						46	
47	Governance	166,457	150,000	16,457	11.0%	225,000	47
48						48	
49	Debt Service Expense	1,888,953	2,314,080	(425,127)	(18.4%)	3,471,125	49
50						50	
51	GRAND TOTAL EXPENSE	124,511,002	128,736,018	(4,225,016)	(3.3%)	192,722,655	51
52						52	
53	Projected Contribution to Reserve					2,029,548	53
54						54	
55	NET SURPLUS / (DEFICIT)	3,512,909	(351,806)	3,864,714	(1098.5%)	-	55
56						56	
57	Reserve, Beginning Balance	26,878,850				26,878,850	57
58	Projected Contribution to Reserve	-				2,029,548	58
59	Reserve, Ending Balance	26,878,850				28,908,398	59
60						60	
61	* Fuel and Lubricants costs were decreased by a realized gain of \$681,358 from the fuel hedge program.						61
62						62	



BOARD OF DIRECTORS 2024

DEVORA "DEV" DAVIS, CHAIR
 STEVE HEMINGER, VICE CHAIR
 PAT BURT
 CINDY CHAVEZ
 JEFF GEE
 RICO E. MEDINA
 RAYMOND MUELLER
 SHAMANN WALTON
 MONIQUE ZMUDA

MICHELLE BOUCHARD
 EXECUTIVE DIRECTOR

PENINSULA CORRIDOR JOINT POWERS BOARD

INVESTMENT PORTFOLIO

AS OF FEBRUARY 29, 2024

TYPE OF SECURITY	MATURITY DATE	INTEREST RATE	PURCHASE PRICE	MARKET RATE
Local Agency Investment Fund (Unrestricted) *	Liquid Cash	4.122%	375,789	375,789
County Pool (Unrestricted)	Liquid Cash	3.945%	585,044	585,044
Other (Unrestricted)	Liquid Cash	5.217%	120,593,975	120,593,975
Other (Restricted)	** Liquid Cash	5.023%	34,469,110	34,469,110
			\$ 156,023,917	\$ 156,023,917

Interest Earnings for February 2024 \$ 281,413.82
 Cumulative Earnings FY2024 1,726,784.61

* The market value of Local Agency Investment Fund (LAIF) is calculated annually and is derived from the fair value factor as reported by LAIF for quarter ending June 30th each year.

** Prepaid Grant funds for Homeland Security, PTMISEA and LCTOP projects, and funds reserved for debt repayment. The Portfolio and this Investment Report comply with the Investment Policy and the provisions of SB 564 (1995). The Joint Powers Board has the ability to meet its expenditure requirements for the next six months.

Farebox Revenues by Ticket Type	PENINSULA CORRIDOR JOINT POWERS BOARD													
	Previous Years					FY2024								
	FY2019	FY2020	FY2021	FY2022	FY2023	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	FY2024 Total YTD
REVENUE														
OPERATIONS:														
401400 (TVM)	18,431,265	11,165,620	2,458,837	6,836,440	6,838,317	701,507	580,909	427,973	542,427	429,650	414,419	409,800	398,044	3,904,729
401410 (Clipper)	54,621,910	37,970,696	2,924,987	7,764,755	15,493,238	1,584,242	1,688,849	1,283,054	1,964,018	1,537,081	1,331,257	1,526,512	1,563,600	12,478,612
401420 (Central)	64,908	20,799	309,748	39,911	58,267	1,068	-	7,861	8,407	2,619	251	2,732	4,123	27,061
401430 (Mobile App)	4,716,955	5,689,776	830,051	2,808,795	3,501,791	289,934	353,887	285,899	332,212	307,863	242,542	278,638	278,385	2,369,361
401500 (Gilroy)	1,903,941	1,542,171	178,759	449,281	706,203	58,850	58,850	75,084	64,261	64,261	64,261	64,261	61,705	511,535
401700 (Go-Pass)	22,929,136	19,705,372	25,737,533	15,337,175	16,728,021	1,362,537	1,337,709	1,370,632	1,375,408	1,349,604	1,426,899	1,256,768	1,264,651	10,744,208
total Farebox Revenue	102,668,114	76,094,433	32,439,915	33,236,357	43,325,839	3,998,139	4,020,204	3,450,502	4,286,733	3,691,078	3,479,630	3,538,712	3,570,507	30,035,505
Less: Go-Pass														
401700 (Go-Pass)	22,929,136	19,705,372	25,737,533	15,337,175	16,728,021	1,362,537	1,337,709	1,370,632	1,375,408	1,349,604	1,426,899	1,256,768	1,264,651	10,744,208
Revenues without Go-Pass	79,738,978	56,389,061	6,702,382	17,899,182	26,597,817	2,635,602	2,682,496	2,079,870	2,911,325	2,341,474	2,052,731	2,281,944	2,305,856	19,291,297
Tickets Sold						Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Total
TVM	2,354,393	1,465,876	315,378	755,674	802,158	78,363	74,658	69,149	55,296	52,840	51,726	52,299	47,968	482,299
Clipper	3,521,066	2,620,816	339,753	1,227,757	1,975,206	194,041	214,425	208,775	207,849	191,852	165,395	195,218	197,151	1,574,706
Central	9,167	5,044	-	4,032	6,440	100	231	484	717	-	478	231	-	2,241
Mobile	543,920	661,515	111,394	381,441	428,741	40,439	41,483	39,565	37,168	33,606	29,903	33,356	34,991	290,511
# of tickets sold (without go-pass)	6,428,546	4,753,251	766,525	2,368,904	3,212,545	312,943	330,797	317,973	301,030	278,298	247,502	281,104	280,110	2,349,757
AVG Revenue Per Ticket						Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-23	Feb-23	Total
TVM	\$ 7.83	\$ 9.05	\$ 7.80	\$ 9.05	\$ 8.52	\$ 8.95	\$ 7.78	\$ 6.19	\$ 9.81	\$ 8.13	\$ 8.01	\$ 7.84	\$ 8.30	\$ 8.10
Clipper	\$ 15.51	\$ 6.32	\$ 8.61	\$ 6.32	\$ 7.84	\$ 8.16	\$ 7.88	\$ 6.15	\$ 9.45	\$ 8.01	\$ 8.05	\$ 7.82	\$ 7.93	\$ 7.92
Central	\$ 7.08	\$ 9.90	\$ -	\$ 9.90	\$ 9.05	\$ 10.68	\$ -	\$ 16.24	\$ 11.72	\$ -	\$ 0.53	\$ 11.83	\$ -	\$ 12.08
Mobile	\$ 8.67	\$ 7.36	\$ 7.45	\$ 7.36	\$ 8.17	\$ 7.17	\$ 8.53	\$ 7.23	\$ 8.94	\$ 9.16	\$ 8.11	\$ 8.35	\$ 7.96	\$ 8.16
Total	\$ 12.40	\$ 11.86	\$ 8.74	\$ 7.56	\$ 8.28	\$ 8.42	\$ 8.11	\$ 6.54	\$ 9.67	\$ 8.41	\$ 8.29	\$ 8.12	\$ 8.23	\$ 8.21

Farebox Revenues by Ticket Type	PENINSULA CORRIDOR JOINT POWERS BOARD								
	July to February						Annual Budget		
	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2024	% of Budget	
REVENUE									
401400 (TVM)	12,274,497	10,224,191	1,227,138	4,082,197	4,239,282	3,904,729			
401410 (Clipper)	36,115,004	36,290,980	1,699,762	4,369,406	10,373,137	12,478,612			
401420 (Central)	35,878	42,121	-	27,937	34,522	27,061			
401430 (Mobile App)	2,646,875	5,386,754	391,046	1,599,120	2,259,653	2,369,361			
401500 (Gilroy)	1,292,730	1,388,579	108,864	256,564	466,424	511,535			
401700 (Go-Pass)	13,965,169	17,162,090	20,264,860	10,117,986	11,363,162	10,744,208			
total Farebox Revenue	66,330,153	70,494,713	23,691,669	20,453,212	28,736,180	30,035,505	46,700,000	64%	
Less: Go-Pass									
401700 (Go-Pass)	13,965,169	17,372,416	20,138,368	10,169,888	11,206,423	10,744,208	16,764,000	64%	
Revenues without Go-Pass	52,364,984	53,122,297	3,553,301	10,283,324	17,529,758	19,291,297	29,936,000	64%	
Tickets Sold									
TVM	1,596,233	1,374,080	175,704	444,650	542,036	482,299			
Clipper	2,298,237	2,478,299	172,186	677,791	1,268,403	1,574,706			
Central	4,448	4,920	-	2,757	3,148	2,241			
Mobile	296,398	624,895	56,521	214,448	283,102	290,511			
# of tickets sold (without go-pass)	4,195,316	4,482,194	404,411	1,339,646	2,096,689	2,349,757			
AVG Revenue Per Ticket									
TVM	\$ 7.69	\$ 7.44	\$ 6.98	\$ 9.18	\$ 7.82	\$ 8.10			
Clipper	\$ 15.71	\$ 14.64	\$ 9.87	\$ 6.45	\$ 8.18	\$ 7.92			
Central	\$ 8.07	\$ 8.56	\$ -	\$ 10.13	\$ 10.97	\$ 12.08			
Mobile	\$ 8.93	\$ 8.62	\$ 6.92	\$ 7.46	\$ 7.98	\$ 8.16			
Total	\$ 12.48	\$ 11.85	\$ 8.79	\$ 7.68	\$ 8.36	\$ 8.21			

**Peninsula Corridor Joint Powers Board
Staff Report**

To: Finance Committee
Through: Michelle Bouchard, Executive Director
From: Casey Fromson, Chief of Staff
Subject: **Authorize Amendment 1 to Contract with Olson Remcho LLP for General Counsel and Other Legal Services Including Execution of Two One-Year Option Terms**

Finance Committee
Recommendation

Technology, Operations,
Planning, and Safety
Committee Recommendation

Advocacy and Major
Projects Committee
Recommendation

Purpose and Recommended Action

Staff recommends that the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB) to:

1. Authorize Amendment No. 1 to Agreement 21-J-P-020 for General Counsel and Other Legal Services to increase the capacity amount by \$2,000,000, from \$10,000,000 to a new not-to-exceed total amount of \$12,000,000.
2. Exercise both of the two one-year option terms under the contract for continued provision of legal services through May 9, 2026.
3. Authorize any unused funds from the base term to rollover to the option terms.
4. Authorize the Executive Director or designee to execute the contract amendment with Olson Remcho LLP in a form approved by legal counsel.

Discussion

On August 6, 2020, the Board adopted Resolution 2020-42, which provides, in part: "That the JPB Board shall appoint an independent counsel (and shall not have the same counsel as any member agency) by January 31, 2021, to represent the JPB..."

In March 2020, the JPB retained Olson Remcho for special counsel services, and to prepare the July 2020 Report on Member Agencies' Rights and Obligations under JPB Governing Documents. As pointed out in that report, the 1996 Joint Powers Agreement at Section 10 provides that the JPB shall designate its legal counsel.

After adoption of Resolution 2020-42, the JPB Governance Process Ad Hoc Committee on General Counsel Selection (Ad Hoc Committee) undertook to study how best to accomplish the appointment of an independent counsel. The Ad Hoc Committee objectives were threefold: first,

to comply with the language and intent of Resolution 2020-42 for appointment of independent counsel; second, to ensure the integrity, quality, and continuity of legal support for the JPB's programs and operations; and third, to develop a recommendation for appointment of an independent counsel for the Board's consideration at the November 2020 meeting.

At its November 2020 meeting, the Board received a presentation on the recommendations of the Ad Hoc Committee. After consideration and discussion, the Board supported the recommendation for the procurement of a law firm to provide a general counsel firm to advise the Board, and to manage the provision of legal services to the JPB.

On December 18, 2020, staff issued Request for Proposals (RFP) 21-J-P-020 for provision of general legal counsel services. Staff received proposals from three firms. On May 6, 2021, the JPB awarded a competitive procurement to Olson Remcho LLP to provide General Counsel and Other Legal Services for a three-year base term and up to two one-year option terms after a Selection Committee found them to be the highest-ranked, qualified proposer.

The scope of services for the contract is to advise and represent the JPB as general counsel, with responsibilities including:

- Serve as counsel at JPB Board and committee meetings; provide practical advice to assist the Board in achieving its policy goals and objectives.
- Advise the Board on good governance practices, including but not limited to JPB governing documents and rules of the Board, ethics laws, open meeting laws, conflicts of interest and gifts, as well as public records disclosure and retention requirements.
- Furnish day-to-day legal advice as needed; attend staff and other meetings such as management team meetings as requested.
- Coordinate with staff, consultants and other counsel in order to be familiar with matters arising before the Board.
- Oversee and manage the provision of other legal services provided to the JPB under contract or through the managing agency in areas including federal and state laws and regulations related to commuter rail, public transit/transportation law, construction law, federal and state grant requirements, environmental law, intellectual property, and public and private finance, litigation, and labor law.

The proposed contract amendment does not change the scope of services to be performed by Olson Remcho. Rather, it increases the awarded contract capacity to sufficiently cover and more accurately reflect the legal needs of the JPB, which have increased over time, especially during the past three years. Specifically, Caltrain has required significant legal support since May 2021 to advance major planning and construction projects, implement the governance memorandum of understanding, and resolve litigation matters. A summary report of legal expenses since the beginning of the contract is provided in Exhibit 1 below.

Exhibit 1 – General Counsel and Other Legal Services Contract Expense Summary

Expense Category	Legal Expenses by Contract Year			Totals Since Contract Inception
	Year 1 (5/10/21 – 5/9/22)	Year 2 (5/10/22 – 5/9/23)	Year 3 (5/10/23 – Present)	
Operations & Board Support	\$ 917,549	\$ 1,407,609	\$ 1,084,344	\$ 3,409,501
Capital Projects	\$ 235,074	\$ 407,735	\$ 467,454	\$ 1,110,262
Governance	\$ 446,757	\$ 193,496	\$ 151,156	\$ 791,408
Litigation	\$ 112,650	\$ 210,833	\$ 333,666	\$ 657,148
Third Party Costs ¹	\$ 220,356	\$ 20,501	\$ 54,362	\$ 295,219
Total	\$ 1,932,385	\$ 2,240,173	\$ 2,090,981	\$ 6,263,539

1. Third Party Costs reflect specialty legal services in areas such as environmental law, retirement law, etc. for which Olson Remcho engages external firms to provide requisite subject matter expertise.

Olson Remcho has served as JPB general counsel since May 10, 2021. The proposed contract amendment would extend their services for another two years until May 9, 2026.

Budget Impact

Staff previously completed a value and price analysis of the Olson Remcho proposed fees, and determined the fees are within market rates for similar services and compare favorably with the fees Olson Remcho charges agencies similar to the JPB. Olson Remcho’s rates remain fair and reasonable. Sufficient funding for this contract is available in the current adopted operating budget and will be included in future years’ operating budgets.

Prepared By: Maria Flores Procurement Administrator 650.622.7892
Graham Rogers Business Operations Project Manager 650.551.6169

Resolution No. 2024-

**Board of Directors, Peninsula Corridor Joint Powers Board
State of California**

* * *

**Amendment 1 to Contract 21-J-P-020 with Olson Remcho LLP for General Counsel and Other
Legal Services Including Execution of Two One-Year Option Terms**

Whereas, pursuant to Resolution No. 2021-27, the Board of Directors (Board) of the Peninsula Corridor Joint Powers Board (JPB) awarded a contract to Olson Remcho LLP to provide General Counsel and Other Legal Services for a three-year term for a total contract amount of \$6,000,000; and authorized up to two, additional one-year option terms for an additional not-to-exceed total of \$2,000,000 per option term, if deemed in the best interest of the JPB and approved by the Board; and

Whereas, additional compensation is now required to sufficiently cover and more accurately reflect the evolving legal needs of the JPB, which have increased over time due to major capital project support requirements, ongoing governance implementation workstreams, and litigation matters, among other areas; and

Whereas, staff recommends that the Board authorize an amendment to increase the not-to-exceed contract capacity amount by \$1,000,000 for the three-year base term, from \$6,000,000 to \$7,000,000; and

Whereas, staff recommends that the Board authorize the Executive Director to exercise both one-year option terms for a new not-to-exceed total of \$2,500,000 per option term; and

Now, Therefore, Be It Resolved that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby authorizes the execution of Amendment 1 to Contract 21-J-P-020

adding \$1,000,000 of capacity to the base contract and an additional \$500,000 to each of the two one-year option terms; and

Be It Further Resolved that the Board of Directors of the Peninsula Corridor Joint Powers Board authorizes the Executive Director, or designee, to take any other actions necessary to give effect to the resolution.

Regularly passed and adopted this 4th day of April, 2024 by the following vote:

Ayes:

Noes:

Absent:

Chair, Peninsula Corridor Joint Powers Board

Attest:

JPB Secretary

**Peninsula Corridor Joint Powers Board
Staff Report**

To: Finance Committee
Through: Michelle Bouchard, Executive Director
From: Kate Jordan Steiner, Chief Financial Officer
Subject: **Award of Contract for On-Call Management of Soil, Hazardous Waste and Other Environmental Compliance Services**

Finance Committee Recommendation Technology, Operations, Planning, and Safety Committee Recommendation Advocacy and Major Projects Committee Recommendation

Purpose and Recommended Action

The contract for On-Call Management of Soil, Hazardous Waste and Other Environmental Compliance Services (Services) will provide the Peninsula Corridor Joint Powers Board (JPB) with a qualified and experienced environmental compliance consulting firm. The scope of services includes identifying applicable environmental compliance regulations; providing guidance on the timing, processes, scope, and adequacy of compliance work; reviewing plans; and managing associated environmental compliance documentation. The consulting firm will support staff with capital projects, third-party projects, operations, and coordination in response to spills and other related events.

Staff recommends that the Board of Directors (Board) of the JPB:

1. Award an on-call contract to Millennium Consulting Associates of Pleasanton, CA (MECA) to provide the Services for a total not-to-exceed amount of \$4 million for a five-year base term.
2. Authorize the Executive Director or designee to execute a contract with MECA in full conformity with the terms and conditions of the solicitation documents and negotiated agreement, and in a form approved by legal counsel.
3. Authorize the Executive Director or designee to exercise up to two one-year option terms with MECA for a total not-to-exceed additional amount of \$800,000, in the aggregate, if deemed in the best interest of the JPB.

Discussion

The JPB is engaged in a variety of capital projects, as well as operations-related activities, that require it to address potentially contaminated soil, hazardous materials, and compliance with other environmental regulations. The consultant will support JPB's Project Manager with documentation and reporting.

The Services will be utilized on an as-needed basis. Award of this contract will not obligate the JPB to purchase any specific level of service from MECA.

On June 1, 2023, the JPB issued a Request for Proposals (RFP), solicitation No. 23-J-P-060, for the On-Call Soil and Hazardous Waste Environmental Compliance Planning and Support Services (Previous Solicitation). The Previous Solicitation received a single proposal from MECA. The Selection Committee (Committee) determined MECA did not receive an adequate score for award of contract for the written proposal. On September 7, 2023, the Board rejected the single proposal received under the Previous Solicitation and authorized staff to re-advertise for the Services.

Staff conducted market research to get feedback from proposers who showed interest in the Previous Solicitation but did not submit a proposal. Prospective proposers responded that they were too busy to prepare the proposal by the due date, did not believe they met the RFP requirements, or preferred to partner with prime as a subconsultant. As a result, the JPB decided to re-advertise the Services and improve the solicitation package and contractor outreach. In addition, staff conducted a debriefing with MECA to review their experience and qualifications as detailed in their proposal, particularly areas that did not substantially align with the RFP requirements.

On September 25, 2023, the JPB issued a new RFP, solicitation No. 24-J-P-030, for the Services. This replacement RFP was re-advertised on the JPB’s e-Procurement website. Staff held a pre-proposal meeting and two potential proposers attended. By the October 30, 2023 due date, the JPB received a single proposal from MECA.

The proposal from MECA was timely submitted and was found to be responsive to the requirements in the RFP.

A Selection Committee (Committee) composed of qualified staff from JPB’s Rail Development Department reviewed and evaluated the proposal in accordance with the following weighted criteria:

Evaluation Criteria	Maximum Points
Qualifications and Experience of Firm	30 Points
Qualifications and Experience of Key Personnel	30 Points
Project Understanding of and Approach to Service Requirements	20 Points
Project Manager Experience	10 Points
Reasonableness of Cost	10 Points
Small Business Enterprise (SBE) Preference	5 Points
Total	105 Points

After review, evaluation, interview, and scoring, the Committee determined that MECA possesses the depth of experience and qualifications needed to successfully perform the Services.

Following negotiations with MECA, staff conducted a price analysis and determined that MECA’s prices are fair and reasonable.

MECA is a certified Small Business Enterprise (SBE) and received the full five-point SBE preference.

Budget Impact

Work Directives issued under this contract will be funded by a mix of Federal, State, Regional and/or Local funds from current and future capital and/or operating budgets.

Prepared by: Cathie Silva	Procurement Administrator III	650.622.7857
Bonny O'Connor	Manager, Cap Projects & Env.	650.508.7944

Resolution No. 2024-

**Board of Directors, Peninsula Corridor Joint Powers Board
State of California**

* * *

Awarding a Contract to Millennium Consultant Associates for On-Call Management of Soil, Hazardous Waste and Other Environmental Compliance Services for a Total Not-to-Exceed Amount of \$4 Million for a Five-Year Base Term, and Authorizing Two One-Year Option Terms for an Additional Not-to-Exceed Aggregate Amount of \$800,000

Whereas, on June 1, 2023, the Peninsula Corridor Joint Powers Board (JPB) issued Request for Proposals (RFP) number 23-J-P-060 for On-Call Soil and Hazardous Waste Environmental Compliance Planning and Support Services (Services); and

Whereas, on September 7, 2023, the JPB Board of Directors (Board) rejected the single, non-responsive proposal received in response to RFP 23-J-P-060, and authorized the Executive Director or designee to re-advertise the Services; and

Whereas, based on the feedback from interested proposers that did not submit a proposal, staff determined it was in the best interest of the JPB to improve the solicitation package and contractor outreach for re-issuance; and

Whereas, on September 25, 2023, the JPB issued a new RFP number 24-J-P-030 for the Services; and

Whereas, in response to the RFP, the JPB received one proposal, from Millennium Consultant Associates of Pleasanton, California (MECA); and

Whereas, a Selection Committee (Committee) composed of qualified staff reviewed, evaluated, and ranked MECA's proposal in accordance with the weighted criteria set forth in the RFP, and conducted an interview with the firm; and

Whereas, the Committee determined that MECA possesses the depth of experience and qualifications needed to successfully perform the Services; and

Whereas, staff and legal counsel reviewed MECA's proposal and determined it complies with the requirements of the RFP; and

Whereas, staff conducted a price analysis and determined that MECA's negotiated prices are fair and reasonable; and

Whereas, staff recommends that the Board of Directors (Board) award a contract to MECA to provide the Services for a five-year base term for a total not-exceed amount of \$4 million, and up to two one-year option terms for a total not-to-exceed additional aggregate amount of \$800,000.

Now, Therefore, Be It Resolved that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby awards a contract to Millennium Consultant Associates of Pleasanton, California to provide On-Call Management of Soil, Hazardous Waste and Other Environmental Compliance Services for a five-year base term for a total not-exceed amount of \$4 million, and up to two one-year option terms for a total not-to-exceed additional aggregate amount of \$800,000; and

Be It Further Resolved that the Board authorizes the Executive Director or designee to execute a contract on behalf of the JPB with MECA in full conformity with the terms and conditions of the solicitation documents and negotiated agreement, and in a form approved by legal counsel; and

Be It Further Resolved that the Board authorizes the Executive Director or designee to execute up to two one-year option terms, if in the best interest of the JPB.

Regularly passed and adopted this 4th day of April, 2024 by the following vote:

Ayes:

Noes:

Absent:

Chair, Peninsula Corridor Joint Powers Board

Attest:

JPB Secretary

**Peninsula Corridor Joint Powers Board
Staff Report**

To: Finance Committee
Through: Michelle Bouchard, Executive Director
From: James Harrison, General Counsel
Subject: **Authorization to Apply to CalPERS for a Successor Agency Contract**

Finance Committee Recommendation Technology, Operations, Planning, and Safety Committee Recommendation Advocacy and Major Projects Committee Recommendation

Purpose and Recommended Action

Rail Division employees currently accrue pension and healthcare benefits through SamTrans' contracts with CalPERS. Since the execution of the Governance MOU, counsel for SamTrans and Caltrain have determined that Caltrain should have a separate contract with CalPERS for Rail Division employees. The California Public Employees Retirement Law permits an agency that establishes eligibility, both as a public entity and on a financial basis, to become a contracting agency with CalPERS. It further permits an agency that assumes certain functions of another agency, in whole or in part, to establish a successor agency contract to assume contractual responsibility for the accrued benefits of those employees. Staff recommends that the Peninsula Corridor Joint Powers Board (JPB or Caltrain), in close coordination with SamTrans, apply for a successor agency contract with CalPERS. Under a successor agency contract, Rail Division employees would be moved from the SamTrans plan to a new Caltrain plan, and Caltrain would continue its financial responsibility for providing pension benefits for those employees under this separate contract with CalPERS. CalPERS generally takes about three months to determine whether an applicant is eligible to contract with CalPERS, and after eligibility is determined, the contracting process usually takes approximately 9-12 months. Once a contract is negotiated, it will be subject to approval by the Board of Directors (Board) of the JPB.

Staff recommends that the Board:

1. Authorize the Executive Director or designee to apply to contract with CalPERS to assume contractual responsibility for providing pension benefits to Rail Division employees, and take all other necessary steps to secure a successor agency contract with CalPERS, subject to the Board's approval of the contract. These efforts will be pursued in close coordination with SamTrans.

Discussion

Government Code section 20508 permits an agency that assumes certain functions of another agency, in whole or in part, to become a contracting agency with CalPERS. This allows the successor agency to cover in its own contract with CalPERS the pension liabilities and

responsibilities previously included in the former agency's contract with CalPERS, even if the former agency continues to exist and provide other functions to serve the successor agency.

Since the execution of the Governance MOU, counsel for SamTrans and Caltrain have determined that Caltrain should have a separate contract with CalPERS for Rail Division employees. Both SamTrans and Caltrain have retained counsel specializing in CalPERS and retirement law matters and they have recommended that Caltrain seek a successor agency contract with CalPERS to assume the financial liabilities of, and continue providing pension benefits to, Rail Division employees.

Obtaining a successor agency contract with CalPERS involves two steps. First, Caltrain must apply to CalPERS for a determination that it is eligible to contract with CalPERS. Caltrain's application must demonstrate that it is a public agency and that it has a stable source of revenue outside of member agency contributions sufficient to absorb the costs of contracting with CalPERS. In order to satisfy the "public agency" requirement, Caltrain must qualify as a political subdivision or an agency or instrumentality of a political subdivision. Caltrain qualifies as a public agency under both definitions. With respect to the "stable source of revenue" requirement, farebox and Measure RR revenues establish an independent source of funds sufficient to meet its CalPERS obligations. Within approximately three months of receiving the eligibility application, CalPERS will determine whether Caltrain is eligible to contract with CalPERS. Caltrain's retirement law expert believes that there is a high likelihood that CalPERS will conclude that Caltrain is eligible to contract with CalPERS. If the Board approves moving forward to obtain its own CalPERS pension contract, Caltrain, in coordination with SamTrans, would submit the application for eligibility with CalPERS within approximately 30 days.

The second step in the process involves the negotiation and approval of a contract with CalPERS. This will include providing CalPERS with census data for all Rail Division employees who will be covered under Caltrain's contract and the selection of benefits. As part of that process, Caltrain and SamTrans agree that the Caltrain contract should mirror the SamTrans contract. CalPERS will use this information to prepare an actuarial valuation that will identify the expected contribution rate and assets and liabilities to be transferred from the SamTrans contract to the Caltrain contract. This process takes up to 90 days, and Caltrain and SamTrans would work together to provide CalPERS all necessary information.

In addition, prior to entering into the CalPERS contract, the member agencies will be required to amend the 1996 Joint Powers Agreement to provide that the member agencies are contractually obligated for Caltrain's pension liabilities, in the event of its dissolution, insolvency, or termination of its CalPERS pension contract. Given the value of Caltrain's assets, it is highly unlikely that this clause would ever be triggered. It is anticipated that this amendment could be accomplished as part of the other changes to the JPA required by the Governance MOU, and those changes could be made and approved by the member agencies while Caltrain and CalPERS are negotiating the successor agency contract.

Once these steps are completed, the Caltrain Board will be required to approve the CalPERS contract (i.e., the contract is not effective unless and until the Board approves it). Caltrain's

retirement law expert anticipates the entire process from start to finish will take approximately one year.

Budget Impact

Because Caltrain already pays for the benefits of the Rail Division employees and is responsible for the unfunded accrued liability associated with their benefits, this should not affect Caltrain's financial obligations.

Prepared By: James Harrison, General Counsel

Resolution No. 2024-

**Board of Directors, Peninsula Corridor Joint Powers Board
State of California**

* * *

Authorizing PCJPB to Apply to CalPERS for a Successor Agency Contract

Whereas, Government Code section 20508 permits an agency that assumes certain functions of another agency, in whole or in part, to become a contracting agency with the California Public Employees' Retirement System (CalPERS). Government Code section 20508 further permits an agency that assumes certain functions of another agency, in whole or in part, to establish a successor agency contract to assume contractual responsibility for the accrued benefits of those employees; and

Whereas, Rail Division employees currently accrue pension and healthcare benefits through San Mateo County Transportation District's (SamTrans) contracts with CalPERS; and

Whereas, since the execution of the Governance Memorandum of Understanding (MOU), counsel for SamTrans and Caltrain have determined that the Peninsula Corridor Joint Powers Board (JPB or Caltrain) should have a separate contract with CalPERS for Rail Division employees; and

Whereas, staff accordingly recommend that Caltrain, in close coordination with SamTrans, apply for a successor agency contract with CalPERS; and

Whereas, obtaining a successor agency contract with CalPERS is a two-step process; and

Whereas, Caltrain must first apply to CalPERS for a determination that it is eligible to contract with CalPERS. Caltrain's application must demonstrate that it is a public agency and that it has a stable source of revenue outside of member agency contributions sufficient to absorb the costs of contracting with CalPERS; and

Whereas, Caltrain satisfies the “public agency” requirement because it is a political subdivision or an agency or instrumentality of a political subdivision; and

Whereas, Caltrain satisfies the “stable source of revenue” requirement because farebox and Measure RR revenues establish an independent source of funds sufficient to meet its CalPERS obligations; and

Whereas, the second step in the process involves the negotiation and approval of a contract with CalPERS. To streamline that process, Caltrain and SamTrans agree that the Caltrain contract should mirror the SamTrans contract; and

Whereas, CalPERS will then prepare an actuarial valuation that will identify the expected contribution rate and assets and liabilities to be transferred from the SamTrans contract to the Caltrain contract; and

Whereas, Caltrain and SamTrans would work together to provide CalPERS all necessary information; and

Whereas, under a successor agency contract, Rail Division employees would be moved from the SamTrans plan to a new Caltrain plan, and Caltrain would continue its financial responsibility for providing pension benefits for those employees under this separate contract with CalPERS; and

Whereas, prior to entering into the CalPERS contract, the member agencies will be required to amend the 1996 Joint Powers Agreement to provide that the member agencies are contractually obligated for Caltrain’s pension liabilities, in the event of its dissolution, insolvency, or termination of its CalPERS pension contract; and

Whereas, because Caltrain already pays for the benefits of the Rail Division employees and is responsible for the unfunded accrued liability associated with their benefits, there is no anticipated effect on Caltrain’s financial obligations.

Now, Therefore, Be It Resolved that the Board of Directors of the Peninsula Corridor Joint Powers Board hereby authorizes the Executive Director, or designee, to apply to contract with CalPERS to assume contractual responsibility for providing pension benefits to Rail Division employees, and take all other necessary steps to secure a successor agency contract with CalPERS, subject to the Board’s approval of the contract; and

Be It Further Resolved that these efforts to apply to contact with CalPERS and secure a successor agency contract will be pursued in close coordination with the San Mateo County Transportation District.

Regularly passed and adopted this 4th day of April, 2024 by the following vote:

Ayes:

Noes:

Absent:

Chair, Peninsula Corridor Joint Powers Board

Attest:

JPB Secretary