

**MEMORANDUM OF UNDERSTANDING BETWEEN THE PENINSULA CORRIDOR
JOINT POWERS BOARD, THE SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY, THE SAN MATEO COUNTY TRANSIT DISTRICT,
AND THE CITY AND COUNTY OF SAN FRANCISCO**

This Memorandum of Understanding (“MOU”) is entered into by and among the Peninsula Corridor Joint Powers Board (“JPB”), the Santa Clara Valley Transportation Authority (“VTA”), the San Mateo County Transportation District (“SMCTD”), and the City and County of San Francisco (“CCSF”) on this ____ day of _____, 2022 (the “Effective Date”).

RECITALS

- A. Previous Agreements.** VTA, SMCTD, and CCSF are member agencies (“Member Agencies”) of the JPB, which is governed by an amended and restated joint exercise of powers agreement (“JPA”), dated October 3, 1996. The JPB, VTA, SMCTD, and CCSF (together the “Parties”) are also parties to a Real Property Ownership Agreement (“RPOA”), dated December 24, 1991, and an Amendment to Real Property Ownership Agreement (“2008 RPOA”), dated October 31, 2008.
- B. Affirmation of Intent to Address Resolution 2020-42.** JPB Resolution 2020-42 contemplated that the JPB would recommend governance changes to the Member Agencies, including enabling a majority of the JPB to appoint its own Executive Director and providing for the reimbursement of SMCTD for its investment in Caltrain. The resolution further provided that the expenditure of more than \$40 million annually from Measure RR revenues would be subject to a two-thirds majority vote requirement until such time as the JPA has been amended to modify the JPB’s governance structure in a manner satisfactory to the three Member Agencies. This Memorandum of Understanding (“MOU” or “Agreement”) provides a pathway and timeline for consideration of amendments to the JPA that conform with this Agreement, address conflicts between the JPA and RPOA, resolve ambiguities, and codify certain current practices that are inconsistent with the JPA. Upon adoption of an amended JPA, the two-thirds vote requirement established in Resolution 2020-42 will be repealed.
- C. Affirmation of SMCTD as the Managing Agency for Caltrain.** SMCTD shall remain as the Managing Agency for Caltrain, as modified by the terms of this Agreement.
- D. Affirmation Regarding Effect of Repayment of Outstanding Balance to SMCTD under 2008 RPOA.** Upon payment in a non-credit form of the outstanding balance of \$19.8 million owed to SMCTD under the 2008 RPOA: (1) SMCTD shall reconvey its tenancy in common interest in the ROW to the JPB; (2) SMCTD’s equity conversion interest and right to approve real property transactions under the RPOA, except as provided in this Agreement, shall be extinguished; and (3) SMCTD shall be deemed to have released any claim that it may have against VTA and CCSF under the RPOA and 2008 RPOA for SMCTD’s payment of the Additional Contribution.
- E. Additional Payment by CCSF and VTA.** CCSF and VTA shall pay \$15.2 million to SMCTD within twelve (12) months of the Effective Date of this Agreement. Such

payment is to account for the delay in payment of the outstanding amount owed under the 2008 RPOA and SMCTD's agreement to assign certain rights as Managing Agency to the JPB.

- F. Affirmation of JPB Appointment of General Counsel and Auditor.** As of 2021, the JPB has appointed, and will maintain, both its own general counsel and auditor separate from those of any of the Member Agencies.
- G. Affirmation of Rail Service Provider Contract.** This Agreement does not alter the ongoing contractual relationship between the JPB and its selected Rail Service Provider whereby the contractor maintains responsibility for providing the JPB with rail operations, maintenance and support services that include administration/safety; operations and dispatch; maintenance of equipment, track, communications and signals, and stations; construction support; and state of good repair.
- H. Statement Related to Regional Governance.** This Agreement does not preclude JPB's ongoing participation in processes related to potential regional governance changes, including the consideration of recommendations forthcoming from the Network Management Business Case and/or Regional Rail study. Further, the JPB commits to work with stakeholders, including the Metropolitan Transportation Commission ("MTC"), to develop a timeline for expeditious consideration of regional governance recommendations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties agree to the following:

1. Caltrain Executive Director.

- A. A separate, permanent Caltrain Executive Director position ("Caltrain ED") is hereby established. Although this position shall remain as an SMCTD employee, the Caltrain ED shall exclusively report to, and take direction from, the JPB.
- B. The JPB shall have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the Caltrain ED position.
- C. The appointment and termination of the Caltrain ED shall be subject to a simple majority vote of five members of the JPB, provided that the majority consists of at least one Director appointed from each county.

2. Staff Reporting.

- A. The following functions, which are currently included as "direct services" within the existing Rail Division, shall report to the Caltrain ED. The Caltrain ED, as authorized by the JPB, shall have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of employees

providing these functions, subject only to SMCTD's salary ordinance and employee manual and policies:

- i. Rail Operations and Maintenance, which shall include management, oversight, and operational direction of the operations and maintenance activities of TransitAmerica Services Inc. ("TASI") (and any successor contractor for operating the Peninsula Commute Service) as well as management of other aspects of the customer interface in coordination with the communications and marketing group;
 - ii. Rail Planning, which shall include service planning, capital planning, transit-oriented development planning and policy development for Caltrain;
 - iii. Rail Contracts and Budgets, which shall include management of the TASI contract (and any successor contract for operating the Peninsula Commute Service) and other on-call contracts supporting the Rail Division;
 - iv. Rail Development, which shall include capital program management, capital program delivery, engineering, and quality assurance/quality control for Caltrain; and
 - v. The Peninsula Corridor Electrification Project ("PCEP") and the Caltrain Modernization Project ("CalMod") programs.
- B. The following positions, or equivalent positions, shall be added as "direct services" reporting to the Caltrain ED as described below, and the individuals holding these positions shall not serve in a similar role for SMCTD. The Caltrain ED, as authorized by the JPB, shall have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the individuals holding these positions, subject only to SMCTD's salary ordinance and employee manual and policies:
- i. Chief of Staff. This position shall provide executive administrative support to the Caltrain ED, may oversee positions within the Rail Division as determined by the Caltrain ED, and may assist the Caltrain ED in managing the relationship with SMCTD shared services;
 - ii. Director of Government and Community Affairs. This position shall provide direction, policy guidance, and strategy on all government and external affairs matters related to Caltrain, and shall determine the Caltrain work plan for Communications (as pertinent to external affairs only) and coordinate with the SMCTD Communications Chief to implement the direction of the JPB and the Caltrain ED;

- iii. Director of Budgets and Financial Analysis. This position shall provide direction, policy guidance, and strategy on all financial analysis and budgeting matters related to Caltrain, and shall determine the Caltrain work plan for finance and budgets and coordinate with the SMCTD CFO to implement the direction of the JPB and the Caltrain ED;
 - iv. Director of Real Estate. This position shall provide direction, policy guidance, and strategy on all real estate transactions pertaining to Caltrain, and shall determine the Caltrain work plan for real estate and coordinate with the SMCTD Real Estate Director and/or Chief of Planning, Grants, and Transportation Authority to implement the direction of the JPB and the Caltrain ED; and
 - v. Director of Grants and Funds Management. This position shall provide direction, policy guidance, and strategy on the pursuit and management of all grants and public funding sources of interest to Caltrain, and shall determine the Caltrain work plan for grants and coordinate with the SMCTD Director of Grants and Fund Management, and /or Chief of Planning, Grants and the Transportation Authority to implement the direction of the JPB and the Caltrain ED.
- C. The following functions shall continue as fully shared services under the direction of the SMCTD General Manager and in coordination with the Caltrain ED:
- i. Human Resources;
 - ii. Contracts and Procurement;
 - iii. Information Technology;
 - iv. Civil Rights;
 - v. Marketing and Customer Service; and
 - vi. Accounting and Treasury.
- D. The following functions shall continue as partially shared services with policy level direction provided by direct Caltrain positions listed in Subsection 2.B, above, but shall remain under the overall direction of the SMCTD General Manager in coordination with the Caltrain ED:
- i. Communications, Government and External Affairs;
 - ii. Finance and Budgets;
 - iii. Real Estate; and

iv. Grants.

- E. The role of the managing agency shall be to support the JPB through the employment of all staff directly supporting the railroad and the Caltrain ED and through the provision of fully or partially shared services in the areas of Human Resources, Contracts and Procurements, Information Technology, Civil Rights, Accounting, Treasury, Budgets, Finance, Communications, Government and External Affairs, Real Estate and Grants.
- F. With the exception of the direct report positions identified in Subsection 2.B, above, the JPB shall not have the authority to replace a function currently being performed through partially and fully shared services, as set forth in Subsections 2.C and 2.D above, with a direct report, unless SMCTD and the JPB mutually agree to the change, provided that such agreement shall not be unreasonably withheld by either party.
- G. The JPB and SMCTD shall negotiate and execute an agreement that governs the provision of partially and fully shared services, as set forth in Subsections 2.C and 2.D, above. The agreement shall define the scope of partially and fully shared services and how those services will be periodically evaluated and adjusted by mutual agreement. The current arrangement and practices relating to shared services and cost allocation under the internal cost allocation plan (ICAP) in effect as of January 1, 2022, shall only be changed through the negotiated process set forth in this Subsection, unless required by an internal cost allocation plan (ICAP) prepared by SMCTD's consultant and by SMCTD's Cognizant Agency (FTA, Region 9). The JPB and SMCTD agree that they will not unreasonably withhold their consent to a shared services agreement or any subsequent amendment thereto, and will execute a final agreement no later than three (3) months after the payment of \$15.2 million into an escrow account as set forth in Subsection 3.B, below, provided, however, that failure to meet that deadline shall not be grounds for voiding this Agreement.
- H. The JPB shall document the assets owned by the JPB, no later than three (3) months after payment of \$15.2 million into an escrow account as set forth in Subsection 3.B, below, provided, however, that failure to meet that deadline shall not be grounds for voiding this Agreement. The Member Agencies will provide documents related to the assets to the JPB upon request.

3. Right of Way Repayment.

- A. MTC and CCSF have agreed to pay SMCTD \$19.6 million and \$200,000, respectively, for the outstanding balance owed pursuant to the 2008 RPOA. On April 18, 2022, CCSF paid SMCTD the \$200,000 it agreed to pay, and SMCTD acknowledges receipt of that amount and that CCSF has satisfied its obligation

under this Subsection. MTC shall make the remaining \$19.6 million payment forthwith. Upon SMCTD receiving full payment of the remaining \$19.6 million payment from MTC:

- i. SMCTD shall reconvey all of its interest in title to the ROW as set forth in Section 4.1 of the RPOA;
 - ii. SMCTD's equity conversion interest as set forth in Section 7 of the RPOA and its rights to approve real property transactions set forth in Section 8 of the RPOA, except as provided in Subsection 3.D, below, shall be extinguished;
 - iii. All ownership of the ROW shall vest with the JPB, which shall have sole authority over the management, acquisition, and disposition of real property, except as provided in Subsection 3.D, below;
 - iv. SMCTD shall be deemed to have released any claim that it may have against CCSF and VTA under the RPOA and 2008 RPOA for SMCTD's payment of the Additional Contribution, which release shall be documented in a form acceptable to CCSF and VTA.
- B. Within twelve (12) months of execution of this Agreement, CCSF and VTA shall pay SMCTD \$6,080,000 and \$9,120,000, respectively, to compensate SMCTD for the delay in payment of the outstanding balance owed pursuant to the 2008 RPOA and for SMCTD's agreement to assign certain rights as Managing Agency to the JPB. Payment shall be made into an escrow account established by the JPB and the funds shall be disbursed to SMCTD, without further action by SMCTD, upon satisfaction of the conditions specified in Subsection 3.C, below.
- C. The funds in the escrow account shall be disbursed to SMCTD upon: (1) receipt in the escrow account of all of the payments set forth in Subsection 3.B, above; and (2) SMCTD's receipt of \$19.6 million from MTC as set forth in Subsection 3.A., above, or its written acknowledgement that MTC has satisfied its commitment to pay \$19.6 million as set forth in Subsection 3.A.
- D. The JPB shall not sell, transfer, convey, or otherwise dispose of all or substantially all of its interest in the ROW without the written approval of all three member agencies.

4. Reversion.

- A. If the payments required by Subsection 3.B have not been received in the escrow account within twelve (12) months of the execution of this Agreement, the

Managing Agency arrangement, as modified pursuant to Sections 1 and 2, above, and the parties' indemnification obligations, as modified pursuant to Section 6 below, will revert to the written terms of the JPA, the RPOA and 2008 RPOA. In addition, Section 5 shall be void, except that Section 5.A.i, 5.B.i and iii as to the negotiating of the RPOA shall remain, and Section 5.A.i, 5.B.ii and iii, shall remain as to the negotiating of the JPA but only as necessary to implement Section 3.A. Once the funds in the escrow account are disbursed to SMCTD pursuant to Subsection 3.C, this clause shall be void.

- B. The parties acknowledge the existence of Resolution 2020-42 which is described in Recital B of this MOU.

5. Future Amendment of RPOA and JPA.

- A. The parties agree to negotiate amendments to the JPA, the RPOA, and the 2008 RPOA (together the "Agreements") as necessary to accomplish the following:
 - i. Conform the Agreements with the terms of this MOU, which shall take precedence over any conflicting terms of the Agreements;
 - ii. Resolve inconsistencies among the Agreements;
 - iii. Clarify ambiguities in the Agreements; and
 - iv. Codify certain current practices that are inconsistent with the JPA.

The changes made to the Agreements shall be limited to accomplishing the above-mentioned purposes and this Section shall not constitute an opportunity to re-negotiate the Agreements in their entirety.

- B. Timeline.
 - i. Within two (2) months of execution of this Agreement, the JPB shall draft revisions to the RPOA, as amended by the 2008 RPOA (the "Revised RPOA"), for the purpose of making the changes identified in Section 5.A, above, and circulate the Revised RPOA to counsel for the Member Agencies to obtain their input. Counsel for the Member Agencies shall provide their comments on the Revised RPOA to the JPB within 30 days of receiving the Revised RPOA. The Revised RPOA shall be finalized within 30 days of the JPB receiving comments from the Member Agencies, and shall be presented for approval to the JPB and each Member Agency board at the Agency's next regularly scheduled meeting following the payment of funds from MTC to SMCTD.

- ii. Within two (2) months of approval of the Revised RPOA, the JPB shall develop a draft revision to JPA (the “Revised JPA”), for the purpose of making the changes identified in Section 5.A, above, and circulate the Revised JPA to counsel for the Member Agencies to obtain their input. Counsel for the Member Agencies shall provide their comments on the Revised JPA to the JPB within two (2) months of receiving the Revised JPA. The Revised JPA shall be finalized within two (2) months of receipt of Member Agency comments by the JPB and shall be presented to each Member Agency board at an agency’s next regularly scheduled meeting after the draft Revised JPA has been finalized.
- iii. The parties agree to cooperate in good faith and meet the deadlines set forth above, provided, however, that failure to meet these deadlines shall not constitute grounds to terminate this Agreement. This Agreement shall remain in effect and shall take precedence over conflicting provisions of the JPA and RPOA until both the Revised RPOA and Revised JPA are approved and executed by all member agencies.
- iv. Upon approval of the Revised RPOA by the Parties and the Revised JPA by each Member Agency, the super-majority vote requirement in JPB Resolution No. 2020-42 shall be deemed repealed.

6. Indemnification.

- A. The JPB shall defend, indemnify, and hold harmless SMCTD and its respective directors, officers, employees and agents, and its successors and assigns from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from (i) SMCTD’s performance of functions undertaken or directed by JPB direct reports set forth in Sections 1, 2.A and 2.B, above, or SMCTD’s performance of functions directed by the JPB or its Executive Director as set forth in Sections 2.C and 2.D; and (ii) JPB’s negligence, recklessness, or willful misconduct. The only exception to these provisions is that JPB’s obligations under this subsection shall not apply to the extent that the claims, losses, damages, costs, injury or liability arise from or are caused by SMCTD’s gross negligence, willful misconduct, or fraud. The JPB shall select counsel of its choice to defend SMCTD, and SMCTD is authorized to approve such counsel, such approval not to be unreasonably withheld.
- B. SMCTD shall defend, indemnify, and hold harmless the JPB and its respective directors, officers, and agents, and the successors and assigns from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from (i) SMCTD’s provision of shared services set forth in Sections 2.C and 2.D, above, not otherwise directed by the JPB, its Executive Director or JPB’s direct reports; and (ii) SMCTD’s negligence, recklessness, or willful misconduct. The only exception to these provisions is that SMCTD’s obligations under this subsection shall not apply to the extent that the claims, losses, damages, costs, injury, or liability arise from or are caused by

JPB's gross negligence, willful misconduct, or fraud. SMCTD shall select counsel of its choice to defend the JPB, and JPB is authorized to approve such counsel, such approval not to be unreasonably withheld.

- C. Except as provided in Subsections 6.A and 6.B above, JPB shall indemnify Member Agencies for activities undertaken by the JPB as provided in Section 16 of the JPA.
7. **Attorneys' Fees and Costs.** Each party to this Agreement shall bear its own costs in connection with negotiating, drafting, and approving this Agreement, the Revised RPOA, and the Revised JPA.
8. **Term of Agreement.** This Agreement shall remain in effect until such time as the Member Agencies either (1) approve both a Revised RPOA and Revised JPA, or (2) the Member Agencies and JPB mutually agree to amend or terminate this Agreement.
9. **Terms of Agreement Prevail Over Existing Agreements.** To the extent a conflict exists among any provision of this Agreement and the JPA, RPOA, 2008 RPOA, or any other agreement among the parties, the provisions of this Agreement shall take precedence over any conflicting provisions of any other agreement as long as this Agreement remains in effect.
10. **Notices.** All notices, payments, requests, demands, and other communications to be or given under the MOU shall be in writing and shall be deemed to have been duly served given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail:

SMCTD: San Mateo County Transit District
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: General Manager

JPB: Peninsula Corridor Joint Powers Board
1250 San Carlos Avenue
San Carlos, CA 94070
Attn: Executive Director

CCSF: San Francisco Municipal Transportation Agency
1 South Van Ness Ave., Floor 7
San Francisco, CA 94102
Attn: Director of Transportation

VTA: Santa Clara Valley Transportation District
3331 North First Street
San Jose, CA 95134
Attn: General Manager

In addition to the written notice required above, the parties agree to provide courtesy notice to all of the general managers and general counsels for the parties of such notice by email.

11. **Governing Law.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of California.
12. **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns.
13. **Amendments.** This Agreement may be amended at any time and from time to time, provided such amendments are in writing and executed by all parties.
14. **Representation.** SMCTD, VTA, CCSF, and the JPB have each been represented by independent counsel with respect to the negotiations and approval of this Agreement.
15. **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.
16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall be deemed an entire Agreement.

In witness whereof the parties have entered into this Agreement on the date first written above with the intent to be legally bound.

PENINSULA CORRIDOR JOINT POWERS BOARD

By: _____
Michelle Bouchard
Acting Executive Director, JPB

Approved as to form by:

By: _____
James C. Harrison
General Counsel, JPB

SAN MATEO COUNTY TRANSIT DISTRICT

By: _____

Carter Mau
Acting General Manager

Approved as to form by:

By: _____
Jim Wagstaffe
Special Counsel, SMCTD

SANTA CLARA VALLEY TRANSPORTATION DISTRICT

By: _____
Carolyn Gonot
General Manager, VTA

Approved as to form by:

By: _____
Evelynn Tran
General Counsel, VTA

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Jeffrey P. Tumlin
Director of Transportation
Municipal Transportation Agency

Approved as to form by:

By: _____
David F. Innis
Deputy City Attorney