

## FEEDER SERVICE AGREEMENT

This Caltrain Feeder Service Agreement (Agreement), dated as of July 1, 2016, is entered into between the Peninsula Corridor Joint Powers Board (JPB) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA). The JPB and City may be individually referred to as “Party” or collectively referred to as the “Parties.”

### RECITALS

**A.** Since 1984, Caltrain patrons from the Peninsula, and San Francisco residents using Caltrain, have been provided access to and from the Caltrain Terminal at Fourth and King Streets via the SFMTA's Municipal Railway ("Muni") fixed-route bus service and dedicated express bus service operated by Muni (former line 80X and current lines 81X and 82X) and partially funded pursuant to an agreement with the sponsoring Caltrain agency.

**B.** In 1998, access to and from the Caltrain Terminal was enhanced by the addition of Muni Metro light rail service. At that time, the Parties agreed that in recognition of Muni's commitment to provision of such Metro light rail service, the full cost of service on said express lines 80X, 81X and 82X would be the obligation of the JPB.

**C.** It is the desire of the JPB to continue to fund service in San Francisco to Caltrain patrons, utilizing all of the present Muni facilities serving the Caltrain Terminal (fixed-route bus, dedicated express bus, and Muni Metro light rail).

**D.** Toward that end, the Parties desire to memorialize their understanding of the terms for provision of these services going forward and for reimbursement of the SFMTA as the service provider.

### AGREEMENT

#### I. Services

**A.** In addition to its fixed-route bus service in the vicinity of the Caltrain Terminal, the SFMTA will continue to operate express routes 81X and 82X. The JPB will continue to support costs of service on 17 morning trips from 4<sup>th</sup> and Townsend streets, each trip starting between the hours of 6:00AM and 9:00AM, six trips on the 81X, and 11 trips on the 82X. The SFMTA will make future changes to the routes and number of morning trips for the 81X or 82X only as jointly agreed to by the SFMTA and JPB as provided in subsection B below.

**B.** In the event that the SFMTA or JPB desires to modify the routes and number of morning trips for the 81X or 82X, either Party shall notify the other Party in writing of the proposed modifications, taking into consideration necessary lead times to develop schedules, implement driver sign-up, and obtain permits. Any proposed modifications and adjustments to compensation must be approved and agreed upon in writing by each Party.

**C.** The Parties agree that the SFMTA's obligations under this Agreement are subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco.

#### II. Reimbursement for Costs

**A.** The JPB shall reimburse the SFMTA for the costs of operating the service provided pursuant to Section I of this Agreement. The rate of said reimbursement shall be as

stated in subsection B, below. The Parties agree that the JPB will not currently support afternoon service of any of the two routes and will only be responsible for the costs of the operation of route 82X between 4<sup>th</sup> and Townsend Streets and Levi Plaza.

**B.** The JPB shall reimburse the SFMTA at the initial rate of \$250,000 per JPB Fiscal Year, currently July 1 to June 30, for service provided on routes 81X and 82X. This base amount of \$250,000 will increase annually by the Consumer Price Index distributed by the Bureau of Labor Statistics for the Consolidated Metropolitan Statistical Area covering San Francisco-Oakland-San Jose (Bay Area CPI) calculated for the previous April (starting in April 2017 for the fiscal year from July 1, 2017 to June 30, 2018). JPB acknowledges that this rate represents a significant discount from the SFMTA's FY 2016-17 operating costs for this service. In consideration of the SFMTA's agreement to use this discounted rate, the JPB understands that the SFMTA will provide no revenue offsets in the form of credits for passenger revenues collected. The SFMTA shall present an invoice to the JPB no more frequently than once a month, but at least quarterly, for reimbursement.

**III. Recording and Audit.** The Parties shall establish and maintain accounting and reporting procedures that conform to generally accepted accounting principles. The SFMTA shall keep and maintain accurate and detailed records and accounts of bus hours operated by the feeder bus service subject to this Agreement.

**IV. Excuse from Performance**

**A.** The Parties shall be excused from performing their respective obligations under this Agreement in the event they are prevented from performing such obligations by reason of fire, flood, earthquake, storm, acts of God, strike, lockouts, labor disputes, explosion, war, insurrection, riots, acts of any government (including judicial action), and/or any other cause similar to the foregoing, which is beyond control of, and not the fault of, the party claiming excuse of performance hereunder.

**B.** In the event that either Party validly exercises its right under the above paragraph, the Parties waive any claims against each other for any damages sustained as a result of the exercise of such rights.

**V. Term and Termination.**

**A.** This Agreement will begin on July 1, 2016 and shall continue unless terminated as provided in Subsection B. below.

**B.** Either Party may terminate the Agreement, without cause: (a) with 90 days' advance written notice, or (b) such advance notice as the SFMTA requires in order to develop schedules and implement driver sign-ups to effectuate changes in service necessitated by the termination, whichever period is longer.

**VI. Notices.** Any notice, request, instruction, or other document deemed by either Party to be necessary or desirable to be given to the other Party shall be in writing and may be given by personal delivery to a representative of the Parties at the address below or by mailing the same, addressed as follows:

To SFMTA: Edward D. Reiskin  
Director of Transportation  
San Francisco Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> floor  
San Francisco, CA 94103

To JPB: Jim Hartnett  
General Manager/CEO  
Peninsula Corridor Joint Powers Board  
1250 San Carlos Avenue  
P.O. Box 3006  
San Carlos, CA 94070

## **VII. Mutual Indemnity**

**A.** The JPB agrees to indemnify, save harmless and defend the City, its officers, agents and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of the JPB, its Directors, officers, agents, employees and subcontractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of the City, its officers, agents, or employees.

**B.** The City agrees to indemnify, save harmless and defend the JPB, its Directors, officers, agents, and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of the City, its officers, agents, employees and subcontractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of the JPB, its officers, agents, or employees.

**C.** The foregoing provisions regarding indemnification are included pursuant to the provisions of Section 895.4 of the Government Code, and are intended by the parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of the Government Code.

**VIII. Compliance with ADA.** The JPB and the City acknowledge that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Without limiting any other provision of this Agreement, the JPB and the City will provide the services specified in this Agreement in a manner that complies with the Americans With Disabilities Act (ADA) Title 24, and any and all other applicable federal, state, and local disability rights legislation. The JPB and the City agree not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the JPB and the City, their employees, agents or assigns will constitute a material breach of this Agreement.

**IX. Agreement Made in California.** This Agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of California and all terms of the Agreement shall be governed by and subject to the provisions of the Charter of the City and County of San Francisco.

**X. Integrated Agreement; Modification.** This Agreement contains all the agreements of the Parties. No alteration, amendment, or modification of the terms of this Agreement shall be valid unless in writing and executed in the same manner as this Agreement.

**XI. Assignment.** Neither Party shall assign or transfer any interest in this Agreement without the prior written consent of the other Party.

**XII. Section Headings.** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

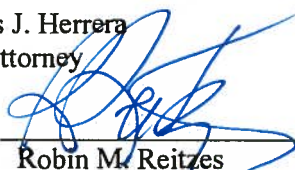
**XIII. Waiver.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms designated, shall not be waiver of

any such default or right to which the Party is entitled, nor shall it in any way affect the right of the party to enforce such provision thereafter.

**XIV. Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of the Agreement shall remain in full force and effect and in no way shall be affected, impaired or invalidated.

**XV. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers, on the day and year first hereinabove written.

<p>PENINSULA CORRIDOR JOINT POWERS BOARD</p> <p>By _____ JIM HARTNETT General Manager/CEO</p> <p>Approved as to Form:</p> <p>By _____ Joan Cassman General Counsel</p>	<p>CITY AND COUNTY OF SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY</p> <p>By _____ EDWARD D. REISKIN Director of Transportation</p> <p>SFMTA Board of Directors Resolution No. _____ Dated: _____</p> <p>ATTEST:</p> <p>_____ Secretary, Municipal Transportation Agency Board of Directors</p> <p>Board of Supervisors Resolution No. _____ Dated: _____</p> <p>ATTEST:</p> <p>_____ Clerk of the Board</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:  Robin M. Reitzes Deputy City Attorney</p>
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