

**SEVEN-PARTY SUPPLEMENT TO  
2012 MEMORANDUM OF UNDERSTANDING (MOU)**

**FINANCIAL COMMITMENTS TO ADDRESS FUNDING GAP FOR  
THE PENINSULA CORRIDOR ELECTRIFICATION PROJECT**

BY AND AMONG THE FOLLOWING PARTIES (PARTIES)

SAN MATEO COUNTY TRANSPORTATION AUTHORITY (SMCTA)  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA)  
CITY AND COUNTY OF SAN FRANCISCO (CCSF)  
SAN FRANCISCO COUNTY TRANSPORTATION AUTHORITY (SFCTA)  
METROPOLITAN TRANSPORTATION COMMISSION (MTC)  
PENINSULA CORRIDOR JOINT POWERS BOARD (PCJPB)  
CALIFORNIA HIGH SPEED RAIL AUTHORITY (CHSRA)

## RECITALS

WHEREAS, during the spring of 2012, the California High Speed Rail Authority (CHSRA) and the Peninsula Corridor Joint Powers Board (PCJPB), together with the Metropolitan Transportation Commission (MTC), the San Francisco County Transportation Authority (SFCTA), the Santa Clara Valley Transportation Authority (VTA), the City of San Jose, the City and County of San Francisco (CCSF), the San Mateo County Transportation Authority (SMCTA), and the Transbay Joint Powers Authority entered into a Memorandum of Understanding that adopted an early investment strategy pertaining to the Blended System in the San Francisco to San Jose Segment of the Peninsula Rail Corridor (the "2012 Nine-Party MOU"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the 2012 Nine-Party MOU identifies two principal inter-related projects as essential to the early investment strategy: (1) the Peninsula Corridor Electrification Project, including associated rolling stock acquisition (the PCEP), and (2) construction of an advanced signal system, commonly known as the PCJPB's "CBOSS" project, which will incorporate federally mandated Positive Train Control (collectively, the "Early Investment Projects"); and

WHEREAS, the Parties to the 2012 Nine-Party MOU agreed to work together to identify the appropriate amounts and types of local resources that may be used to support the completion of the Early Investment Projects and to coordinate efforts to obtain funding using a mutually agreed-upon strategy, and in the event that funding for the program is constrained by statute, rescission of existing law, change in funding requirements or eligibility, reduction in funding level or availability, the Parties agreed to take steps to notify each other as needed in a timely manner; and

WHEREAS, \$125 million in FTA funds identified in the 2012 Early Investment Strategy funding plan included in the 2012 Nine-Party MOU is needed by the PCJPB to advance critical state of good repair improvements necessary to maintain existing Caltrain operations, and the PCJPB has requested to remove these funds from the early investment funding strategy, which would create a \$125 million funding gap; and

WHEREAS, a note to the 2012 early investment strategy funding plan included in the 2012 Nine-Party MOU indicated that other potential future funding sources could be substituted if secured; and

WHEREAS, the PCJPB conducted a cost estimate study for the PCEP in 2014 to update the 2008 cost estimate on which the 2012 Nine-Party MOU funding strategy for the PCEP was based, and the PCJPB has since included additional program contingency to the PCEP, such that the total anticipated budget for the PCEP is up to \$1.980 billion, which includes costs covering the contracts, program management, and contingency costs; and

WHEREAS, the Parties to this Seven-Party Supplement (Supplement) have met and discussed with all parties to the 2012 Nine-Party MOU additional funding needed for the PCEP to support contract award and have agreed to the funding commitments specified herein;

NOW, THEREFORE, it is mutually understood and agreed to by the PARTIES as follows:

1. To fully fund the PCEP, the parties to this Supplement commit to make the funding available to support the PCEP as set forth below. This funding is in addition to funding commitments

previously made by these parties in the 2012 Nine-Party MOU.

- a. The SMCTA will contribute an additional \$20 million;
- b. The VTA will contribute an additional \$20 million;
- c. The SFCTA and/or the CCSF will contribute an additional \$20 million;

(For SMCTA, VTA, and SFCTA and/or CCSF, each agency's contribution is contingent on the commitment of \$20 million each from the other two PCJPB partners, with the exact manner and timing of the contributions to be worked out with the PCJPB. The commitment of CCSF is subject to the Special Provisions in Exhibit C, attached to and incorporated in this MOU. These Special Provisions only apply to the funds to be provided by CCSF, and not any other parties to this Supplement.)

- d. The MTC will program \$28.4 million from Regional Measures 1 and 2;
  - e. The PCJPB will contribute \$9 million from funding provided by formula to Caltrain through the State of California's Low Carbon Transit Operations Program; and
  - f. The CHSRA will contribute an additional \$113 million.
2. The Parties to this Supplement also support the PCJPB's efforts to obtain \$647 million from FTA's Core Capacity Grant Program for the PCEP as a regional priority. The \$647 million would help provide funding needed for the PCEP, as well as funding to support a larger contingency set-aside for the PCEP program.
  3. The Parties to this Supplement understand PCJPB has requested \$225 million from the California State Transportation Agency's Transit & Intercity Rail Capital Program (Cap & Trade TIRCP) to support the PCEP, as contemplated in the 2012 Nine-Party MOU. These funds will be prioritized for PCEP and will be used to backfill any shortfall in requested FTA Core Capacity funds. If available, funding not needed for PCEP will be used to replace the remaining Caltrain diesel vehicles with Electric Multiple Units (EMUs). The exact remaining number of vehicles to be replaced will be contingent on the final Cap & Trade TIRCP grant award.
  4. The Parties to this Supplement also agree that, with the additional funding sources, \$125 million in FTA funds identified in the 2012 Early Investment Strategy funding plan will no longer be needed for the PCEP, and will instead be programmed by the MTC to the PCJPB to advance critical Caltrain state of good repair improvements through MTC's established regional Transit Capital Priorities process.
  5. The total anticipated amount of funding to be secured for the PCEP will be \$1.980 billion, which includes the funding sources outlined above in paragraphs 1, 2, and 3, along with the original funding sources in the 2012 Nine-Party MOU except the \$125 million noted in paragraph 4 above. The revised funding plan for the PCEP reflecting the changes described herein is attached as Exhibit B.
  6. The parties to this supplement agree to continue, through regular meetings, to provide opportunity for all nine parties to the 2012 Nine-Party MOU to discuss, review, and/or comment on relevant project matters and collectively provide advisory oversight to help advance the PCEP.

7. If overall program costs reflect a financial commitment that is below the funding plan of \$1.980 billion, funding commitments from the parties to this Supplement will be reduced proportionally according to their respective additional shares as stated in this Supplement.
8. In the event overall program costs reflect a financial commitment that is above the funding plan of \$1.980 billion, or if the FTA Core Capacity funds are awarded at less than \$647 million, the parties to this Supplement will discuss with all parties to the 2012 Nine-Party MOU how to secure additional funding beyond what is presently identified, and/or discuss project scope adjustments to match to funding availability.
9. The parties to the 2012 Nine-Party MOU will also discuss and agree in writing on program oversight roles for the funding partners prior to the award of the PCEP contracts.

IN WITNESS WHEREOF, this MOU has been executed by the PARTIES hereto as of the day and year indicated next to each signature, with the final signature date constituting the effective date.

Jim Hartnett, Executive Director  
Peninsula Corridor Joint Powers Board and  
San Mateo County Transportation Authority

Date

Nuria Fernandez, General Manager/CEO  
Santa Clara Valley Transportation Authority

Date

Edwin M. Lee, Mayor  
City and County of San Francisco

Date

Board of Supervisors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of the Board

Tilly Chang, Executive Director  
San Francisco County Transportation Authority

Date

Steve Heminger, Executive Director  
Metropolitan Transportation Commission

Date

Jeff Morales, Chief Executive Officer  
California High Speed Rail Authority

Date

APPROVED AS TO FORM BY:

Attorney for Peninsula Corridor Joint Powers Board and San Mateo County Transportation Authority	Date
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Attorney for Santa Clara Valley Transportation Authority	Date
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Dennis J. Herrera, City Attorney

By:

Robin M. Reitzes, Deputy City Attorney Attorney for City and County of San Francisco	Date
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Attorney for San Francisco County Transportation Authority	Date
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Attorney for Metropolitan Transportation Commission	Date
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Attorney for California High Speed Rail Authority	Date
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**EXHIBIT B**  
**FUNDING PLAN FOR PENINSULA CORRIDOR**  
**ELECTRIFICATION AND ADVANCED SIGNAL SYSTEM PROJECTS**  
(\$ millions)

	9-Party MOU Funding Strategy	Changes in the 7-Party Supplemental MOU	Revised Costs & Funding Sources	CBOSS	PCEP
<b>Projected Costs</b>					
PCEP	1,225.0	755.0	1,980.0	-	1,980.0
CBOSS	231.0		231.0	231.0	-
Total	1,456.0	755.0	2,211.0	231.0	1,980.0
<b>Funding Sources</b>					
JPB Member Contributions	180.0	60.0	240.0	47.0	193.0
JPB Local	11.0	9.0	20.0	11.0	9.0
Caltrain PTC	4.0		4.0	4.0	
Subtotal Local	195.0	69.0	264.0	62.0	202.0
Prop 1A Connectivity	106.0		106.0	106.0	
Prop 1A HSRA	600.0		600.0		600.0
CHSRA Cap & Trade/Other		113.0	113.0		113.0
Cap & Trade TIRCP <sup>1</sup>		20.0	20.0		20.0
Prop 1B Caltrain	24.0		24.0	16.0	8.0
Subtotal State	730.0	133.0	863.0	122.0	741.0
FRA	17.0		17.0	17.0	
FTA/FHWA Prior/Current Obligations <sup>2</sup>	45.8		45.8	29.8	16.0
FTA Future Obligations	440.0	(125.0)	315.0		315.0
FTA Core Capacity <sup>3</sup>	-	647.0	647.0	-	647.0
Subtotal Federal	502.8	522.0	1,024.8	46.8	978.0
MTC Bridge Tolls	11.0	28.4	39.4		39.4
BAAQMD Carl Moyer	20.0		20.0		20.0
Subtotal Regional	31.0	28.4	59.4	-	59.4
Total	1,458.8	752.4	2,211.2	230.8	1,980.4

**Notes**

1. The parties to the Seven-Party Supplement to 2012 Memorandum of Understanding recognize that the JPB has requested State Cap & Trade TIRCP funds to help fund the PCEP. Of the \$225m requested, \$20m is identified to help close the funding gap in the \$1.98 billion project cost estimate for PCEP.

2. The \$2.8m represents a FHWA grant (Railway/Hwy Hazard Elimination) for the CBOSS project that was secured after the 2012 MOU execution. This amount is not included in the 7-party MOU since the funding is for the CBOSS project.

3. \$647 million in FTA Core Capacity funds would help close the funding gap for PCEP, as well as providing funding to support a larger contingency set-aside for PCEP.

## EXHIBIT C

### Special Provisions for the City and County of San Francisco

(References to "City" in Paragraphs 1 and 2 refer to the City and County of San Francisco)

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**3. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.



## Attachment 2

### FUNDING PARTNERS OVERSIGHT PROTOCOL FOR CALTRAIN'S CAL MOD PROGRAM

(Electrification, Vehicles, CBOSS)

1. The Caltrain Project Management staff (CPMT) will have an open door policy with the Funding Partners' oversight representatives (Partners), who will have access to project Section Managers and available information. The Funding Partners and their oversight representatives understand that some information will be confidential and commit to honor that confidentiality by not sharing or divulging any information so defined.
2. The Partners will attend all progress meetings with the CPMT, to stay abreast of all project activities and when warranted, may also attend, as observers, partnering sessions and progress meetings with the contractor. The CPMT will provide a list of current and anticipated regularly scheduled meetings, and the Partners and CPMT will jointly determine the meetings that would be most useful.
3. Subject to FTA concurrence, the Partners will also attend meetings with the FTA and its PMO. It will be the responsibility of the Partners to secure FTA's agreement to such participation. The CPMT will make the first approach to the FTA.
4. The CPMT will make available to the Partners all project deliverables, reports, plans, procedures, and progress and cost reports for review and comment, which will be performed within the stipulated review period. Should the Partners not provide comments by the due date, the CPMT may assume that they are not forthcoming.
5. The Partners will review progress and cost reports and provide comments.
6. The Partners will participate in consultant selection panels and proposal/bid reviews.
7. The Partners will monitor quality through regular discussions with the Quality Assurance Manager.
8. The Partners will be members of the Risk Management team and participate in all Risk Management meetings and receive copies of the original risk register, its monthly updates, and reports.
9. The CPMT will institute a Configuration Management Board (CMB), with one representative each from San Francisco, CHSRA, and VTA as voting members, to review all proposed changes, regardless of whether they are owner, designer, or contractor originated, to determine merit, agree on quantum, and ultimately authorize all changes for the project. The Partners agree that their representative to the CMB will have the appropriate technical and Project Management background. No member of the CMB will have Veto power.
10. The Partners will provide support to the CPMT on funding and financing issues.
11. The Partners will review and approve project invoices submitted to their respective Agencies and assure that they are processed on a timely manner.
12. The Partners will assist the CPMT with development of grant amendments and funding requests which are submitted to their respective Agencies for approval.