

THIS PRINT COVERS CALENDAR ITEM NO.: 11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving a Memorandum of Understanding (MOU) between the Peninsula Corridor Joint Powers Board (JPB), the City and County of San Francisco (CCSF), the San Mateo County Transportation District (SMCTD), and Santa Clara Valley Transportation Authority (VTA) relating to the JPB's governance, and authorizing the Director of Transportation to execute the MOU, contingent on approval by the San Francisco Board of Supervisors.



SUMMARY:

- The JPB is a joint exercise of powers authority formed between CCSF, SMCTD, and the VTA, to operate the Caltrain passenger rail service between San Francisco and Gilroy.
- The JPB is governed by a joint exercise of powers agreement (JPA) dated October 3, 1996. The JPB, CCSF, SMCTD, and VTA are also parties to a Real Property Ownership Agreement (RPOA) dated December 24, 1991, and an Amendment to the RPOA dated October 31, 2008.
- In 1991, SMCTD contributed \$82 million towards the purchase of the Caltrain Right of Way, and obtained certain real property interests and the right to serve as managing agency of Caltrain until it was repaid. As of 2018, \$19.8 million remained to be repaid.
- On August 6, 2020, as a condition for CCSF's support of Measure RR, the JPB adopted a resolution expressing the desire to modify Caltrain's governance structure to allow the JPB to appoint the Caltrain executive director and to initiate efforts to reimburse SMCTD.
- On March 3, 2022, the JPB adopted a term sheet outlining a proposed governance structure and providing for the repayment of SamTrans' initial investment in the Right of Way.
- Counsel for the JPB, CCSF, SMCTD, and VTA have completed negotiations on an MOU to implement the term sheet and agreed to present the proposed MOU to their respective Boards.
- To take effect, the MOU must be approved by the SFMTA, the San Francisco Board of Supervisors, the JPB, the SMCTD, and the VTA.
- The SFMTA now wishes to request authorization for the Director of Transportation to execute the MOU on behalf of CCSF, contingent upon approval by the Board of Supervisors.

ENCLOSURES:

1. SFMTAB Resolution
2. Memorandum of Understanding Between the JPB, the VTA, the SMCTD, and CCSF

APPROVALS:

	DATE
DIRECTOR 	July 12, 2022
SECRETARY 	July 12, 2022

ASSIGNED SFMTAB CALENDAR DATE: July 19, 2022

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PURPOSE

The purpose of this calendar item is to approve a Memorandum of Understanding (MOU) between the Peninsula Corridor Joint Powers Board (JPB), the City and County of San Francisco (CCSF), the San Mateo County Transportation District (SMCTD), and Santa Clara Valley Transportation Authority (VTA) relating to the JPB's governance, and authorizing the Director of Transportation to execute the MOU, contingent on approval by the San Francisco Board of Supervisors.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Approval of this resolution supports the following SFMTA Strategic Plan Goals:

- Goal 5: Deliver reliable and equitable transportation services.
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking, and bicycling.
- Goal 7: Build stronger relationships with stakeholders.
- Goal 9: Fix things before they break, and modernize systems and infrastructure.
- Goal 10: Position the agency for financial success.

Approval of this resolution supports the following Transit First policy:

- 9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

DESCRIPTION

Significance

The JPB is a joint exercise of powers authority governed by a 1996 agreement between CCSF, the SMCTD, and the VTA (together the Member Agencies). The JPB operates the Caltrain passenger rail service, the seventh largest commuter rail service in the nation. The system operates between San Francisco and Gilroy, currently serving 32 stations along the 77-mile corridor.

On August 6, 2020, in conjunction with adopting a resolution to place Measure RR on the ballot, the JPB adopted Resolution No. 2020-42 to express the JPB's desire to modify Caltrain's governance structure to allow the JPB to appoint the Caltrain executive director. The resolution also expressed the JPB's intent to initiate efforts to reimburse SMCTD for its investment in Caltrain, including by engaging with the Metropolitan Transportation Commission (MTC) and other funding partners, and by prioritizing payment of the SMCTD investment by the JPB, if Measure RR was approved.

Following the November 2020 passage of Measure RR that established a dedicated ¼ cent sales tax

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for Caltrain in San Francisco, San Mateo and Santa Clara counties, the JPB considered various governance proposals. After numerous public meetings, the JPB adopted a term sheet on March 3, 2022, outlining a proposed governance structure and providing for the repayment of SamTrans' initial investment in the Right of Way. Since that meeting, counsel for the JPB and Member Agencies have engaged in negotiations concerning a Memorandum of Understanding. Counsel have now concluded their negotiations and agreed to present the proposed MOU to their respective Boards.

If approved by the JPB and the Member Agencies, the MOU would establish a separate Caltrain Executive Director position and five additional direct reports and provide for repayment of SMCTD's initial investment in the Right of Way, the transfer of real property interests from SMCTD to the JPB, and the payment of \$15.2M from VTA and CCSF to SMCTD, along with other terms. The MOU would also provide a pathway and timeline for the consideration of amendments to the Real Property Ownership Agreement and the Joint Powers Agreement and for the negotiation of a shared services agreement. The JPB and SMCTD have approved the MOU on June 23 and June 21, 2022, respectively.

Background

In 1991, SMCTD contributed \$82 million towards the purchase of the Caltrain Right of Way. As a result of its initial investment in Caltrain, SMCTD obtained certain real property interests and the right to serve as Managing Agency of Caltrain until it was repaid. The Member Agencies' rights and obligations are set forth in a Joint Powers Agreement (JPA) and a Real Property Ownership Agreement (RPOA).

In 2008, the Member Agencies and the JPB entered into an amendment to the RPOA (2008 RPOA Amendment) to provide for the repayment of SMCTD's initial contribution in the amount of \$53.3 million. As part of this agreement, SMCTD agreed to forgo certain interest payments, and in exchange, the parties agreed that SMCTD could serve as Managing Agency of Caltrain, under the direction of the SMCTD General Manager, until it no longer wished to serve in that role. The 2008 RPOA Amendment, which relied upon state gas tax spillover funds to repay SMCTD, also provided that if SMCTD were not repaid within ten years, the Metropolitan Transportation Commission (MTC) would be authorized to identify alternative sources of non-local funds to repay SamTrans. The 2008 RPOA Amendment specified that SMCTD would reconvey its interest as a tenant in common to the Right of Way in San Mateo County to the JPB and relinquish certain other real property interests upon repayment.

As of 2018, SMCTD had been repaid approximately \$33.5 million of the agreed-upon sum of \$53.3 million, leaving \$19.8 million outstanding. Of that amount, CCSF had agreed to pay \$200,000 and MTC had agreed to pay \$19.6M. Earlier this year, CCSF paid SMCTD \$200,000, and MTC agreed to program \$19.6M to SMCTD.

In 2020, the Member Agencies and the JPB agreed to place Measure RR on the ballot to impose a dedicated sales tax for Caltrain. CCSF's support for Measure RR was contingent on the JPB

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adopting Resolution No. 2020-42 that expressed its desire to modify Caltrain's governance structure to allow the JPB to appoint its own Executive Director to operate Caltrain, provided that the parties have reached an agreement to reimburse SMCTD for its investment in Caltrain.

The proposed MOU has already been approved by the governing boards of the JPB (on June 23, 2022) and SMCTD (on June 21, 2022). Staff plan to present the MOU to the other Boards based on the following schedule: SFMTA (July 19, 2022); San Francisco Board of Supervisors (July 26, 2022); and VTA (August 4, 2022).

The MOU¹ would:

- Establish a separate, permanent Caltrain Executive Director who reports exclusively to, and takes direction from, the JPB, which exercises authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the Caltrain Executive Director;
- Establish five new direct report positions, in addition to the Rail Division, reporting to the Caltrain Executive Director. The Executive Director, as authorized by the JPB, would have sole authority over the selection, hiring, annual goal setting, performance review, compensation, and termination of the individuals holding these positions and other positions that provide direct services, subject only to SMCTD's salary ordinance and employee manual and policies;
- Specify that the role of the Managing Agency, as modified by the MOU, is 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, and Real Estate and Grants;
- Provide for the JPB and SMCTD to negotiate and execute a shared services agreement;
- Provide that, upon repayment by MTC of the outstanding \$19.6M to SMCTD, SMCTD will reconvey its interest in the Right of Way, relinquish specified real property interests, and release any claims that it may have against CCSF and VTA under the RPOA and 2008 RPOA Amendment for SMCTD's contribution towards the purchase of the Right of Way;
- Provide for payment of \$15.2M from CCSF (\$6,080,000) and VTA (\$9,120,000) within 12 months of execution of the MOU to compensate SMCTD for the delay in payment of the outstanding balance owed pursuant to the 2008 RPOA Amendment and for SMCTD's agreement to assign certain rights as Managing Agency to the JPB;

¹This is not intended to be an exhaustive description of the terms of the MOU but rather summarizes key provisions.

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- Provide a timeline for negotiation of amendments to RPOA and JPA to conform to the MOU and to address inconsistencies, ambiguities, and uncodified practices. Negotiations will start immediately after the execution of the MOU, and finish with member agency approvals of revised RPOA about 6 months after execution and JPA about 12 months after execution;
- Provide for indemnification by JPB and SMCTD for actions for which they are responsible; and
- Provide that the Managing Agency arrangement will revert to the terms of JPA, RPOA, and 2008 RPOA Amendment and that specified terms of MOU will be void in the event of nonpayment by VTA and CCSF.

Unlike the term sheet, which provided for the \$19.6M and the \$15.2M to be deposited in an escrow account and which tied SMCTD's release of real property interests to the payment of both sums, the MOU bifurcates the payment of the \$19.6M from the payment of the \$15.2M but requires SMCTD to convey its interest in the Right of Way to the JPB and to release any claims it may have against CCSF and VTA for SMCTD's investment in the purchase of the Right of Way upon payment of the \$19.6M. This proposal is consistent with the 2008 RPOA Amendment, pursuant to which MTC owes SamTrans \$19.6M, in two respects: (1) under the 2008 RPOA Amendment, SMCTD is entitled to the \$19.6M, irrespective of the execution of the MOU; and (2) the 2008 RPOA Amendment provides that CCSF and VTA's commitments under the 2008 RPOA Amendment and 1991 RPOA are deemed satisfied and that SMCTD shall reconvey to the JPB its interests in the Right of Way upon payment of the \$19.6M.

TRANSIT SERVICE IMPACT

If the resolution is not approved, it would delay the JPB from settling a long outstanding advance owed to SMCTD for the original Right of Way and moving toward the amendment of the JPA to modify its governance structure and procedures. Addressing these issues has required a significant investment of Caltrain and other agency staff time and resources. Therefore, approval of the MOU that provides movement toward closure on these issues would allow for those staff resources to be focused on the delivery of Caltrain service and operations.

STAKEHOLDER ENGAGEMENT

Following the voters' approval of Measure RR in November 2020, the JPB engaged in extensive governance discussions and considered various governance models at meetings that were open to the public, including the legal and financial implications of each. The deliberations culminated in its adoption of a governance term sheet at the JPB meeting of March 3, 2022.

ALTERNATIVES CONSIDERED

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The alternative is to not approve the resolution which would prevent the JPB from moving toward the amendment of the Joint Powers Agreement to modify its governance structure or procedures.

FUNDING IMPACT

The MOU provides for payment of \$15.2M from CCSF (\$6,080,000) and VTA (\$9,120,000) within 12 months of execution of the MOU to compensate SMCTD for the delay in payment of the outstanding balance owed pursuant to the 2008 RPOA Amendment and for SMCTD's agreement to assign certain rights as Managing Agency to the JPB.

Funding for this payment will come from two sources including operating and one-time capital funds. With the passage of Measure RR in 2020, the SFMTA operating budget contribution typically necessary to cover shortfalls to the Caltrain operating budget were not needed, and therefore a total amount of \$4.58 million was set aside for this payment in the FY 2023 & FY 2024 operating budget. The remaining \$1.50 million will come from the limited contingency dollars set aside in the FY 2023 – 2027 Capital Improvement Program for unanticipated and/or emergency needs.

ENVIRONMENTAL REVIEW

On June 23, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the approval of the MOU between the Peninsula Corridor Joint Powers Board (JPB), the City and County of San Francisco (CCSF), the San Mateo County Transportation District (SMCTD), and Santa Clara Valley Transportation Authority (VTA) relating to the JPB's governance is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Approval of the MOU is required by the San Francisco Board of Supervisors and the governing boards of the San Francisco Municipal Transportation Agency, the SMCTD, and VTA, and the JPB. The MOU has already been approved by the governing boards of the JPB (on June 23, 2022) and SMCTD (on June 21, 2022). Staff will present the MOU to the other Boards based on the following schedule: SFMTA (July 19, 2022); San Francisco Board of Supervisors (July 26, 2022); and VTA (August 4, 2022).

The City Attorney's Office has reviewed the calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the MOU between the Peninsula

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Corridor Joint Powers Board (JPB), the City and County of San Francisco (CCSF), the San Mateo County Transportation District (SMCTD), and Santa Clara Valley Transportation Authority (VTA) relating to the JPB's governance, and authorize the Director of Transportation to execute the MOU, contingent on approval by the San Francisco Board of Supervisors.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Peninsula Corridor Joint Powers Board (JPB) is a joint exercise of powers authority duly formed between the City and County of San Francisco (CCSF), the San Mateo County Transit District (SMCTD), and the Santa Clara Valley Transportation Authority (VTA) (together the Member Agencies) to operate the Caltrain passenger rail service between San Francisco and Gilroy; and

WHEREAS, The JPB is governed by an amended and restated joint exercise of powers agreement (JPA), dated October 3, 1996; and the JPB and the Member Agencies are also parties to a Real Property Ownership Agreement (RPOA) dated December 24, 1991, and an Amendment to the RPOA dated October 31, 2008 (2008 RPOA Amendment); and

WHEREAS, On August 6, 2020, in conjunction with adopting a resolution to place Caltrain sales tax Measure RR on the ballot, the JPB adopted Resolution No. 2020-42 to express the Board's desire to modify Caltrain's governance structure to allow the JPB to appoint the Caltrain Executive Director; and

WHEREAS, JPB Resolution No. 2020-42 also expressed the JPB's intent to initiate efforts to reimburse SMCTD for its investment in Caltrain, including by engaging with the Metropolitan Transportation Commission (MTC) and other funding partners, and by prioritizing payment of the SMCTD investment by the JPB, if Measure RR was approved; and

WHEREAS, Following the passage of Measure RR, the JPB considered various governance proposals, and after numerous public meetings, the JPB adopted a term sheet on March 3, 2022, outlining a proposed governance structure and providing for the repayment of SMCTD's initial investment in the Right of Way by MTC; and

WHEREAS, Following the March 3, 2022 JPB meeting, counsel for the JPB and Member Agencies engaged in negotiations concerning a Memorandum of Understanding (MOU) and have agreed to present the proposed MOU to their respective Boards; and

WHEREAS, The MOU, if approved by the JPB and the Member Agencies, would establish a separate Caltrain Executive Director position and five additional direct reports, provide for the transfer of real property interests from SMCTD to the JPB upon MTC's repayment of \$19.6M for SMCTD's initial investment in the Right of Way, and the payment of \$15.2M from VTA and CCSF to SMCTD, along with other terms; and

WHEREAS, The MOU would also provide a pathway and timeline for the consideration of amendments to the RPOA and the JPA among the parties, and for the negotiation of a shared services agreement between the JPB and SMCTD; and

WHEREAS, To take effect, the MOU must be approved by the SFMTA, the San Francisco Board of Supervisors, the JPB, the SMCTD, and the VTA; and

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; and, now, therefore, be it

RESOLVED, That the SFMTA Board of Directors approves a Memorandum of Understanding (MOU) between the Peninsula Corridor Joint Powers Board (JPB), the City and County of San Francisco (CCSF), the San Mateo County Transportation District (SMCTD), and Santa Clara Valley Transportation Authority (VTA) relating to the JPB's governance, and authorizes the Director of Transportation to execute the MOU, contingent on approval by the San Francisco Board of Supervisors; and, be it further

RESOLVED, That the SFMTA Board of Directors commends this matter to the Board of Supervisors for its approval of the MOU.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 19, 2022.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**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 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